SCMPPOS, 2020/2021

HESSEQUA MUNICIPALITY: MFMA SCM POLICY, PRINCIPLES AND OPERATIONAL SYSTEM

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PART 1.1: DOCUMENT DEFINITION

1.1.1 ISSUING CERTIFICATE

Version	03
Date	01 June 2020
Summary	This document is the SCM Policy, Principles and Operational System applicable to the Hessequa Municipality
Signature	**Date**: **ACCOUNTING OFFICER** ***As delegated in terms of the AO Finance Delegations, item 856797 issued in terms of section 79 of the MFMA, dated 25 February 2015***
Approved by the Council	**Date**: **Resolution**
Transitional arrangements	
Effective date	**01 July 2020 – 30 June 2021**
Next revision date	**May 2020**

1.1.2 APPROACH

1.1.2.1 For ease of reference this SCMPPOS is divided into Volumes and Parts as set out in the contents table.

1.1.2.2 The SCMPPOS, where applicable, is divided into a Policy, Principle and Operational portions. The rationale for this division is to identify the policy provisions of the Council – the 'WHAT', the principle provisions unique to the Municipality and the operational provisions to guide operations – the 'HOW'.

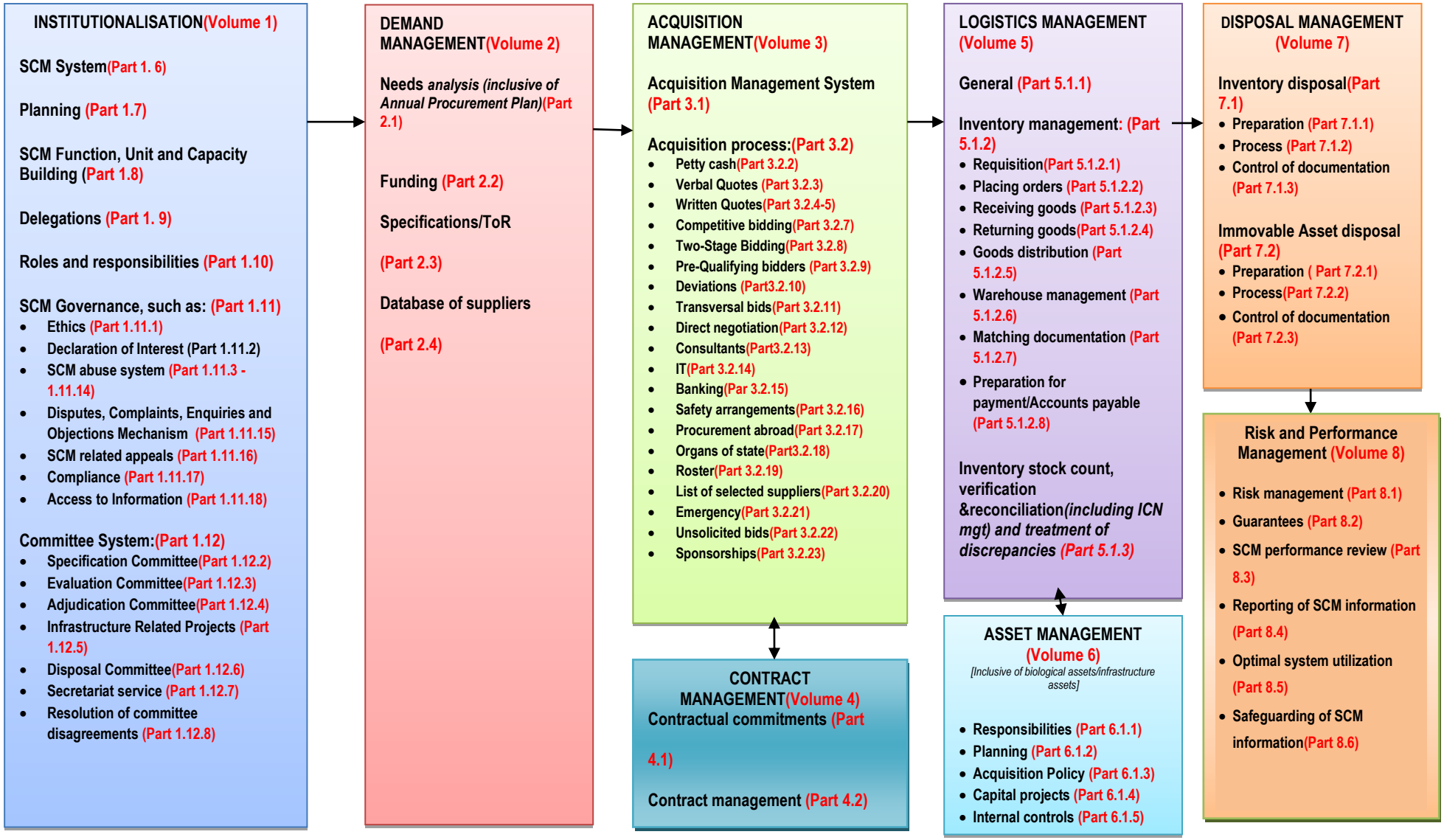
1.1.2.3 The relevant prescripts governing the specific Part is also indicated.

1.1.2.4 It is imperative to note that this SCMPPOS aims to summarise the important aspects to be considered when conducting Municipal SCM and does not in any way replace other official prescripts issued in this regard nor exempt officials from full compliance with such prescripts.

1.1.2.5 The Flow of the SCMPPOS is as per the prescribed SCM System and is graphically depicted in Figure 1 below:

MUNICIPAL SCM SYSTEM MAP

[NOTE that public sector SCM provides for 3 systems – (1) goods and services, (2) infrastructure, (3)immovable property]



1.1.3 APPLICATION

1.1.3.1 This SCMPPOS is applicable to all Councilors, Municipal officials, stakeholders, contractors, suppliers, service providers and any other party doing business with the Hessequa Municipality.

1.1.4 MAINTENANCE

1.1.4.1 Given the changing nature of the regulatory, control and operational environment, this SCMPPOS is subject to review every year, and being updated as and when required. Amendments emanating from review and updating processes will be issued under cover of a SCM Instruction.

1.1.4.2 Maintenance will be performed by the SCMU in the Office of the CFO.

1.1.4.3 Other independent assurance providers, such as the National Treasury, relevant Provincial Treasury, Internal Audit, inclusive of the Audit Committee, and the Auditor-General: SA, will also be involved in the examination of the adequacy and effectiveness of this SCMPPOS to ensure an effective and appropriate control environment.

1.1.5 IMPLEMENTATION

1.1.5.1 The Accounting Officer of Hessequa Municipality must take all reasonable steps to ensure that the Municipality has and implements this Policy.

1.1.5.2 It is the responsibility of management to bring the content of this SCMPPOS to the attention of all parties within their area of control.

1.1.5.3 Non-compliance with this SCMPPOS may result in appropriate disciplinary procedures and/or criminal actions being considered and instituted against the relevant officials and perpetrators where deemed necessary.

1.1.5.4 For clarification of any matter contained in this SCMPPOS, please address queries to the SCMU in the Office of the CFO.

PART 1.2: TERMINOLOGY

1.2.1 ABBREVIATIONS

B-BBEE	Broad Based Black Economic Empowerment
BEE	Black Economic Empowerment
AO	Accounting Officer
CCR	Cost Containment Regulations
CFO	Chief Financial Officer
CIDB	Construction Industry Development Board
CIDBA	Construction Industry Development Board Act
EPWP	Expanded Public Works Programme
DTI	Department of Trade and Industry
FM	Financial Manager
HDI	Historically Disadvantaged Individuals
GCC	General Conditions of Contract
MEC	Member of Executive Council

MUNICIPALITY	Hessequa Municipality
MTEF	Medium Term Expenditure Framework
MFMA	Municipal Finance Management Act (Act 56 of 2003)
NSBC	National Small Business Council
PAIA	Promotion of Access to Information Act (Act 2 of 2000)
PAJA	Promotion of Administrative Justice Act (Act 3 of 2000)
PPP	Public Private Partnership
PPPFA	Preferential Procurement Policy Framework Act (Act 5 of 2000)
RDP	Reconstruction and Development Programme
RFI	Request for Information
RFP	Request for Proposal
RFQ	Request for Quotation
SAPO	South African Post Office
SAPS	South African Police Services
SARS	South African Revenue Services
SASSA	South Africa Social Security Agency
SBD	Standard Bidding Documents
SCA	Supreme Court of Appeal
SCM	Supply Chain Management
SCM TR	Supply Chain Management Treasury Regulations, 2005
SCMU	SCM Unit
SITA	State Information Technology Agency
SLA	Service Level Agreement
SMME	Small Medium and Micro Enterprise
SP	Service Provider
SPLUMA	Spatial Planning and Land Use Management Act, 2013
TCO	Total Cost of Ownership
TOR	Terms of Reference

1.2.2 DEFINITIONS

A-CLASS ITEMS	A-class items are those items which are not consumable or expendable
ACQUISITION MANAGEMENT	Acquisition management is the process of procurement of goods or services and includes the: ❒ Evaluation of bids and tabling of recommendations; ❒ Compilation and signing of contract documents; and ❒ Contract administration and management.
ASSET	Is a resource controlled by an entity as a result of past events and from which future economic benefits or service potential is expected to flow to the entity. It has the following characteristics: ❒ It possesses service potential or future economic benefit that is expected to flow to the entity. ❒ It is controlled by the entity. ❒ It originates as a result of a past transaction or event.
BROAD BASED BLACK ECONOMIC EMPOWERMENT	Means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to—

	(a) increasing the number of black people that manage, own and control enterprises and productive assets; *(b)* facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises; *(c)* human resource and skills development; *(d)* achieving equitable representation in all occupational categories and levels in the workforce; *(e)* preferential procurement; and *(f)* investment in enterprises that are owned or managed by black people.
CONSULTANT	An external person or organization that provides a service to the municipality in those areas, where the municipality either lacks the required specialized skills or Capacity.
DEMAND MANAGEMENT	Demand management ensures that the resources required to support the strategic objectives are delivered at the correct time, at the right price, location, quantity and quality that will satisfy the needs and is inclusive of, but not limited to: ❒ Identification of preferential policy objectives; ❒ Determination of market strategy; ❒ Application of depreciation rates; ❒ Application of total cost of ownership principle; ❒ Compilation of bid documentation, including conditions; and ❒ Determination of evaluation criteria.
DEPRECIATION	Depreciation refers to the reduction in the value of assets generally from wear and tear. The consumption of capital is recognized as a cost of production and an allowance for this is made before net profit is arrived at.
DISPOSAL MANAGEMENT	Disposal management is responsible to ensure that all unserviceable, redundant or obsolete assets are subjected to a formal process of doing away with movable assets in a cost-effective, but transparent and responsible manner. It also entails the maintenance of records and documents as prescribed.
E-CLASS ACCOUNTABLE	Accounting in respect of those stores approved by the Treasury as consumables.
E-CLASS ITEMS	E-class items are consumable and expendable stores that cannot be repaired when it becomes unusable.
ECONOMIC PRINCIPLE	Obtain the highest possible output for the lowest possible use of resources.
ECONOMY OF SCALE	Reductions in the average cost of a product in the long run, resulting from an expanded level of output
EQUIPMENT	A-class accountable stores that are issued and accounted for on an inventory.
FINAL AWARD	In relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept

INTEGRATED SCM	The foundation of the integrated SCM concept is total cost analysis, which is defined, as minimizing the total cost of SCM elements.
IN THE SERVICE OF THE STATE	Means to be – (a) A member of – (i) Any Municipal council (ii) Any provincial legislature, or (iii) The National Assembly or the National Council of Provinces (b) A member of the board of directors of any Municipal entity (c) An official of any Municipality or Municipal entity (d) An employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) (e) A member of the accounting authority of any national or provincial public entity (f) An employee of Parliament or a provincial legislature (g) A person who is an advisor or consultant contracted with the Municipality
INVENTORIES	Including stock and stores (consumable stores, maintenance materials, spare parts, WIP, education/training course materials, client services). Properties/land held for sale. Strategic stocks (fuel supplies, precious stones and metals). Seized or forfeited property.
INVENTORY (MOVABLE ASSETS) MANAGEMENT	It shall be possible to determine accountability for all A-class-accountable items at all times. Records shall therefore be available to describe the full extent of the responsibility of officials for equipment belonging to the institution on personal account or sectional inventories for general usage. Inventory (distribution) ledger accounts shall therefore be maintained for all A-class items.
ITEMS	An individual article or unit.
LACK OF CAPACITY	Insufficient physical resources within the Municipality; Relevant knowledge, expertise and - experience that may not exist within the municipality
LIFECYCLE COSTING	Lifecycle costing is a technique developed to identify and quantify all costs, initial and ongoing, associated with a project or installation over a given period. Thus, it is a tool that forecasts the total cost of a purchase throughout its predetermined lifecycle.
LIST OF ACCREDITED PROSPECTIVE PROVIDERS	Means a list of accredited prospective providers which the Municipality / Municipal entity must keep in terms of Part 2.4 of this SCMPPOS
LOGISTICS MANAGEMENT	Logistics management ensures that goods and services are available at the right place, time and quantities required to execute the functions of the Municipality.
LONG TERM CONTRACT	Means a contract with a duration period exceeding three years
MEASURABLE OBJECTIVES	Measurable objectives identify very specific activities that the Municipality intends performing or delivering in order to achieve the strategic objectives and ultimately the strategic goals it has set. There must therefore be a direct causal link running from the measurable objective to one or more of the strategic objectives.
MOVABLE ASSETS	Movable assets are assets that can be moved (e.g. machinery, equipment, vehicles, etc). All inventories and valuables and most fixed assets belong to this category.
NET PRESENT VALUE (NPV)	The sum that results when the discounted value of the expected costs of an investment are deducted from the discounted value of the expected returns. If the NPV is positive the project in question is

	potentially worth undertaking.
OBSOLETE	No longer produced or used, out of date, to become obsolete by replacing it with something new.
OTHER APPLICABLE LEGISLATION	Means any other legislation applicable to Municipal supply chain management, including – (a) The Preferential Procurement Policy Framework Act, 2000 (Act no. 5 of 2000) (b) The Broad – Based Black Economic Empowerment Act, 2003 (Act no 53 of 2003) (c) The Construction Industry Development Board Act, 2000 (Act no 38 of 2000) (d) The Municipal Systems Act, 2000 (Act 32 of 2000)
MFMA	MFMA means the Municipal Finance Management Act, 2003 (Act No 56 of 2003) as amended, as well as National Treasury Regulations, including SCM Regulations issued in terms thereof.
PRACTITIONER	A person who practices a profession or art.
REDUNDANT	No longer needed or useful, superfluous (unnecessary).
SALVAGE	The act of saving any goods or property in danger of damage or destruction.
SMALL, MEDIUM AND MICRO ENTERPRISE (SMME)	SMME is as defined in the National Small Business Act, 102 of 1996, as amended. Employing a maximum of 100 employees in any sector except manufacturing or construction where the maximum is 200 employees.
STORES/STOCK	All movable state property/assets that are kept in stock for issue purposes.
STRATEGIC GOALS	Strategic goals are areas of institutional performance that are critical to the achievement of the mission. They are statements that describe the strategic direction of the Municipality. It is useful to think of strategic goals as outcomes to be achieved by the Municipality.
STRATEGIC OBJECTIVES	Strategic objectives are more concrete and specific than strategic goals. They should give a clear indication of what the Municipality intends doing in order to achieve the strategic goals it has set for itself, as such strategic objectives would normally describe high-level outputs or "results" of actions that the institution intend taking.
SCM	SCM is an integral part of financial management. This function integrates the planning, procurement and provisioning processes, seeks to introduce international best practices, whilst at the same time addressing Government's preferential procurement policy objectives. Four phases are distinguished in the SCM processes, namely: ❒ Demand management ❒ Acquisition management ❒ Logistics management ❒ Disposal management The planning process is dealt with in the Demand Management phase, the procurement function in Acquisition Management and provisioning in Logistics and Disposal Management.
TREASURY GUIDELINES	Means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act.
'THE ACT'	Means the Local Government Municipal Finance Management Act, 2003 (Act no 56 of 2003) - MFMA
'THE REGULATIONS'	Means the Local Government Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005
VALUE FOR MONEY	In relation to public-private partnership agreements, means that the performance of a private party in terms of the agreement will result in a net benefit to the institution defined in terms of cost, price, quality, quantity, risk transfer or any combination of those factors.

PART 1.3: LEGISLATIVE ENVIRONMENT

Policy

- Hessequa Municipality is committed to comply with applicable legislation as it pertains to SCM.

1.3.1 THE CONSTITUTION

1.3.1.1 In establishing this SCMPPOS, the Municipality intends to comply with section 217 of the Constitution of the Republic of South Africa, (Act No 108 of 1996, as amended) which reads as follows:

"217 (1) When an Organ of State in the national, provincial or local sphere of Government, or any other institution identified in national legislation, contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

217(2) Subsection (1) does not prevent the Municipality from implementing a procurement policy providing for:

- *Categories of preference in the allocation of contracts; and*
- *The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.*

217(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented." ***– in this regard refer to the B-BBEEA and the PPPFA***

1.3.2 MUNICIPAL FINANCE MANAGEMENT ACT (MFMA)

3.2.1 The overall objective of the MFMA is to improve financial management in the public sector and to give Accounting Officers certain discretionary powers to ensure that the intention of the Act is achieved.

3.2.2 Sections 63, 77 and 78 of the MFMA effectively allocate joint responsibility for integrity and maintenance of good corporate governance to all public servants in regard to SCM matters.

3.2.3 The MFMA provides that the National Treasury will issue a framework for the procurement and provisioning of goods and services. The aforementioned was issued by National Treasury as the SCM (SCM) Treasury Regulations, effective from 1 July 2005 and set the framework for the Municipal SCMPPOS.

3.2.4 The SCM Treasury Regulations contain extensive prescripts requiring compliance when tendering for goods and services.

1.3.3 PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT (PPPFA)

3.3.1 In terms of Section 217(2) of the Constitution, Organs of State are not prevented from implementing a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, disadvantaged by unfair discrimination.

3.3.2 The policy, however, may only be implemented within a framework prescribed by national legislation as contemplated in section 217(3) of the Constitution.

3.3.3 To give effect to the Constitution, 1996 the PPPFA was promulgated and took effect on 3 February 2000.

3.3.4 Subsequently, in 2011, a new set of Preferential Procurement Policy Regulations were issued in terms of the aforementioned legislation. The main thrust of the PPPFA, 2000 is that an Organ of State must determine its preferential procurement policy and must implement a preferential procurement framework.

1.3.4 PROMOTION OF ADMINISTRATIVE JUSTICE ACT (PAJA)

1.3.4.1 PAJA, 2000 gives effect to section 33 of the Constitution, 1996 that stipulates that everyone has the right to administrative action that is lawful, reasonable, and procedurally fair.

1.3.4.2 Furthermore, everyone whose rights have been adversely affected have the right to be given reasons or clarification. PAJA, 2000 deals with general administrative law and therefore binds the entire administration at all levels of government.

1.3.4.3 It is important to distinguish between general and particular administrative law. General administrative law governs the administrator's actions in general by stipulating general rules and principles that all administrators must follow, as well as remedies for individuals affected by administrative decisions, for example where administrative powers have not been properly used or where requirements of law have not been followed. By contrast particular administrative law comprises the legislation governing the legal rules, principles and policies that have been developed in specific areas of administration, e.g. law relating to procurement or SCM.

1.3.4.4 PAJA, 2000 further provides a set of general rules and principles for the proper performance of the administrative action in all areas and requires the giving of reasons for administrative action in certain circumstances. In addition, it sets out the remedies that are available if these rules are not complied with or followed. It also indicates how administrative powers allocated to administrators in terms of other statutes and the common law must be exercised in the light of the Constitution.

1.3.4.5 When an official has to execute an administrative action based on discretion he has to apply his mind and must be able to show cause for such "applying of his mind". Following is a short tick list to consider when executing such discretion:

JUST ADMINISTRATIVE ACTION TEST: tick off	
	All relevant and permissible facts and circumstances were taken into consideration (*mindful of previous precedence created*)
	All prescripts, limits and conditions are adhered to
	Ensure decision is within ambit of delegation or legislative power
	Ensure result of action/decision will serve a legal permissible purpose
	Ensure the end-result falls within ambit of budget, budget description and objectives of strategic plan

1.3.5 PROMOTION OF ACCESS TO INFORMATION ACT (PAIA)

1.3.5.1 PAIA, 2000 responds to section 32 of the Constitution, 1996. In terms of this provision everyone has the right of access to information held by the State.

1.3.5.2 PAIA, 2000 fosters a culture of transparency and accountability in the public and private bodies by giving effect to the right of access to information and to actively promote a society in which people have effective access to information to enable them to more fully exercise and protect all their rights.

1.3.5.3 PAIA, 2000 is of particular importance to the administrative decision-maker, as the latter may at any stage, either during the deliberative process or after the decision has been taken, be faced with the request for access to files and or records, e.g. those relating to contracts concluded through SCM processes. It then becomes all the more important to distinguish between information that may be given and information that must be refused. In terms of PAIA, 2000 there are certain categories of information that must be refused, and other categories, which may be refused, hence the importance that both public service officials and administrative decision-makers be familiar with the grounds of exclusion.

1.3.5.4 It is important that SCM practitioners involved in decision-making processes must be able to express views and tender advice without being concerned that these views and advice will be subject to public debate and criticism. PAIA, 2000 does not authorize the withholding of all such information only the extent that disclosure might inhibit frankness. If there is no such risk, views or advice of public sector officials, consultants or advisory bodies or any other individual or group may be divulged.

1.3.5.5 Once a decision has been taken or policy formulated, the argument relating to premature disclosure of information and the consequent expected frustration of the decision or policy formulating process becomes invalid, access may also be granted to such records. Such records may then also serve as proof of the process followed by the administrator in taking the decision and to, inter alia, prove that the relevant administrator did in fact apply his or her mind.

1.3.5.6 Within SCM processes, PAIA, 2000 becomes extremely relevant, e.g. in a situation where a bidder loses a bid through a deliberative and decision-making process and the Municipality is challenged on that matter.

1.3.5.7 Section 42 of PAIA specifically provides that information may be withhold if: 'its disclosure would contain financial, commercial, scientific or technical information and trade secrets, the disclosure of which would be likely to cause harm to the commercial or financial interests of the State or a public body as it contains information, the disclosure of which could reasonably be expected—

(i) to put a public body at a disadvantage in contractual or other negotiations; or

(ii) to prejudice a public body in commercial competition; or

(iii) is a computer program, as defined in section 1 (1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by the State or a public body, except insofar as it is required to give access to a record to which access is granted in terms of this Act.

1.3.6 CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT (CIDBA)

1.3.6.1 According to section 22 of the Bill of Rights in the Constitution, 1996, every citizen has the right to freely choose their trade, occupation or profession.

1.3.6.2 Municipalities are mandated to deliver economic and social infrastructure, such as housing. In the execution of its mandate the Municipality will contract with service providers from the construction industry.

1.3.6.3 Although access to contract opportunities has been widely promoted by government, the sustainability of small contractors is perceived to be jeopardized by, ***inter alia***: some public sector employees that are not committed to procurement reform; complicated tender documentation; lack of standardization within the public sector and the awarding of contracts to the lowest bidder that affects the sustainability of real contractors.

1.3.6.4 The Construction Industry Development Board (CIDB), a national body established by the CIDBA, 2000 is, ***inter alia,*** responsible for developing the industry for the improved delivery of infrastructure to the South African public; working with all stakeholders for the sustainable growth of construction enterprises and the best practice of employers, contractors and the professions; identifying best practice and setting national standards; and promoting common and ethical standards for construction delivery and contracts.

1.3.6.5 Taking a closer view at the powers, functions and duties of the CIDB in relation to SCM matters, one comes to the realisation that this body affects the procurement processes of Municipalities significantly. The powers, functions and duties include, ***inter alia***, the following:

- To provide strategic leadership, the CIDB must promote and implement policies, programmes and projects aimed at, amongst others, procurement reform, standardization and uniformity in procurement documentation, practices and procedures.
- To advance the uniform application of policy with regard to the construction industry, the CIDB must within the framework of the procurement policy of government promote the standardisation of the procurement process with regard to the construction industry.
- To promote uniform and ethical standards within the construction industry, the CIDB must publish a code of conduct for all construction related procurement and all participants involved in the procurement process. Furthermore, the CIDB may in this context initiate, promote and implement national programmes and projects aimed at the standardization of procurement documentation, practices and procedures.
- To promote sustainable growth of the construction industry and the participation of the emerging sector. The CIDB may monitor national programmes aimed at procurement reform and standardization and uniformity in procurement documentation, practices and procedures.
- Furthermore, the CIDBA, 2000 requires that the National Minister responsible for Public Works must prescribe the manner in which public sector construction contracts may be invited, awarded and managed within the framework of the Register of Contractors and within the framework of the policy on procurement. It also requires that every government institution must, subject to the policy on procurement, apply the Register of Contractors to its procurement process.
- Various Regulations, templates and toolkits were issued in this regard and are obtainable from www.cidb.co.za.

1.3.7 COMPETITION ACT, 1998 (CA)

1.3.7.1 Section 22 of the Bill of Rights in the Constitution, 1996, confirms that every citizen has the right to choose their trade, occupation or profession freely. Law may regulate the practice of a trade, occupation or profession.

1.3.7.2 The purpose of the CA, 1998 is to promote and maintain competition in the Republic of South Africa in order to: Promote the efficiency, adaptability and development of the economy; provide customers with competitive prices and product choices; promote employment and advance the social and economic welfare of South Africa; expand opportunities for South African participation in world markets and recognize the role of foreign competition in the Republic and ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy and to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

1.3.7.3 Given the aforementioned goals and in relation to SCM, organs of state in their role as customers in the market are dependent on the enforcement of the provisions of this Act, for example to prevent restrictive practices such as collusive tendering, fronting and price fixing, etc.

1.3.8 POLICY TO GUIDE UNIFORMITY IN PROCUREMENT REFORM PROCESSES IN GOVERNMENT

1.3.8.1 The Policy to Guide Uniformity in Procurement Reform Processes in Government was approved by Cabinet on 10 September 2003 and promulgated on 5 December 2003.

1.3.8.2 The policy has as a goal the uniform implementation of Government's procurement reform initiatives and the issuing of regulations in terms of Section 111 of the MFMA in respect of the Framework for SCM.

1.3.8.3 In terms of this policy strategy Accounting Officers are required to establish and implement a SCM function that promotes sound financial management and uniformity in all spheres of Government.

1.3.8.4 Regarding insurance Organs of State should either insure for procurement related physical risks, establish risk management programmes or make advance provision for losses associated with such risks, within the scope of the provisions of the Treasury Regulations issued in terms of the MFMA. Suitable arrangements should also be made to ensure that insurance related excesses do not cause the failure of SMME's.

1.3.9 NATIONAL TREASURY PRACTICE NOTES

1.3.9.1 The SCM Regulations in terms of the MFMA empower National Treasury to issue practice notes to ensure minimum norms and standards within Government.

1.3.9.2 All documents relevant to SCM are available electronically on National Treasury's web page http://www.treasury.gov.za /organization/ specialist functions/ SCM: norms and standards.

1.3.10 THE KING REPORTS ON CORPORATE GOVERNANCE FOR SOUTH AFRICA

1.3.10.1 The Municipality subscribe to the Code of Corporate Practices Conduct in all material respects as it affects SCM.

1.3.10.2 The Report concludes that successful governance requires companies to adopt an inclusive approach and there must be greater emphasis on the sustainable or non-financial aspects of its performance.

1.3.10.3 The tests of fairness, accountability, responsibility and transparency to all acts or omissions and be accountable to the company, but also responsive and responsible towards the company's stakeholders must be applied.

1.3.10.4 The Report describes the principles of risk management, ethical conduct, black economic empowerment and social investment prioritization and spending.

1.3.11 THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, 2004

1.3.11.1 The Municipality adheres to the provisions of the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004 as it affects the supply chain process.

1.3.11.2 The Act regulates offences in respect of corrupt activities relating to contracts, activities pertaining to acceptance or offering of any gratification and the improper influence of another person as well as offences in respect of corrupt activities relating to procuring and withdrawal of tenders and auctions.

1.3.11.3 The Act provides for miscellaneous offences relating to possible conflict of interest and other unacceptable conduct such as acquisition of private interest in contract, agreement or investment of a public body.

1.3.11.4 It also provides that National Treasury must establish a register for tender defaulters.

1.3.12 THE NATIONAL SMALL BUSINESS ACT, 1996 – [NSBC]

1.3.12.1 The National Small Business Act, Act No 102 of 1996, as amended, establishes the National Small Business Council (NSBC) and also the Ntsika Enterprise Promotion Agency (Ntsika). The main functions of Ntsika is *inter alia*:

1.3.12.2 To expand, coordinate and monitor the provision of training, advice, counseling and any other non-financial services to small business in accordance with the National Small Business Support Strategy.

1.3.12.3 To consult with any organ of government, the NSBC or a service provider in order to *inter alia*:

- Facilitate the provision of business advice and counseling services to small business.
- Facilitate national market access for products and services of small business.
- Generally strengthen the capacity of service providers to support small business and small business to compete successfully in the economy.

1.3.12.4 To enable small businesses to compete successfully in the economy, the procurement policies and practices influence the economic behavior of small businesses, and therefore during the procurement process, it is important to implement guidelines to promote small businesses.

1.3.13 STATE INFORMATION TECHNOLOGY AGENCY ACT, 1998 –[SITA]

1.3.13.1 The State Information Technology Agency (SITA) Act, Act No 88 of 1998, as amended by Act 38 of 2002, requires that SITA may act as the procurement agency for Municipalities' information technology requirements.

1.3.13.2 The parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to SITA.

1.3.13.3 The Accounting Officer must notify SITA together with a motivation of the IT needs of the institution if the transaction value of IT related goods or services required by the institution in any financial year will exceed R50 million (VAT included).

1.3.13.4 If SITA comments on the submission and the Municipality disagrees with such comments, the Municipality may conduct its own IT procurement, provided that the comments and the reasons for rejecting or not following SITA comments must be submitted to the relevant Provincial Treasury and the Auditor General.

1.3.14 BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT, 2003 – [B-BBEEA]

1.3.14.1 This piece of legislation is linked to the Bill of Rights, Section 9 of the Constitution, 1996. The preamble of the B-BBEEA, 2003 reflects that: "… *under apartheid race was used to control access to South Africa's productive resources and access to skills; …the South African economy still excludes the vast majority of its people from ownership of productive assets and the possession of advanced skills; …South Africa's economy performs below its potential because of the low level of income earned and generated by the majority of its people; and …unless further steps are taken to increase the effective participation of the majority of the South Africans in the economy, the stability and prosperity of the economy in the future may be undermined to the detriment of all South Africans*".

1.3.14.2 In relation to SCM, broad-based black economic empowerment means the empowerment of all black people including women, workers, youth, people with disabilities and people living in the rural areas through diverse but integrated socio-economic strategies that include but are not limited to, inter alia, preferential procurement.

1.3.14.3 According to the B-BBEEA, 2003 codes of good practice will be issued on qualification criteria for preferential purposes for procurement and other economic activity.

1.3.14.4 It is of interest to note that the National Treasury in its Budget Review 2004 (2004:71) indicated that the Broad Based Black Economic Empowerment Act and its accompanying Strategy Document have highlighted several deficiencies in the Preferential Procurement Policy Framework Act in relation to Government's empowerment objectives. The National Treasury, in consultation with the Department of Trade and Industry, reviewed the regulations, and introduced changes to the system that becomes effective on 7 December 2011 and will assist towards achieving and monitoring progress in black empowerment.

1.3.15 OTHER LEGISLATION AFFECTING SCM IN THE MUNICIPALITY

The following table indicates other legislation affecting SCM in the Municipality:

Table 3.15: Legislative framework: [= direct impact and = indirect impact]

LEGISLATION AFFECTING SCM IN THE MUNICIPALITY		Direct/Indirect impact
❒	**Constitution of the RSA, 1996**	
❒	**Public Finance Management Act, 1999 (Act 1 of 1999)**	
❒	**Municipal Finance Management Act, 2003 (Act 56 of 2003)**	
❒	**Division of Revenue Act (Annual)**	
❒	**Annual Budgets**	
❒	**Borrowing Powers of Provincial Governments Act, 1996 (Act48 of 1996)**	

LEGISLATION AFFECTING SCM IN THE MUNICIPALITY		Direct/Indirect impact
❒	Disaster Management Act, 2002 (Act 57 of 2002)	
❒	Finance Acts	
❒	Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997	
❒	Local Government Municipal Property Rates Act, 2004 (Act 6 of 2004)	
❒	Municipal Systems Act, 2000 (Act 32 of 2000)	
❒	National Credit Act, 2005 (Act 34 0f 2005)	
❒	Public Audit Act (PAA), 2004 (Act 25 0f 2004)	
❒	Western Cape Direct Charges Act, 2000 (Act 6 of 2000)	
❒	Financial Intelligence Centre Act, 2001 (Act 38 of 2001)	
❒	Provincial Tax Regulation Process Act, 2001 (Act 53 of 2001)	
❒	Value Added Tax Act, 1991 (Act 89 of 1991)	
❒	Promotion of Administrative Justice Act (PAJA), 2000 (Act 3 of 2000)	
❒	Promotion of Access to Information Act (PAIA), 2000 (Act 2 of 2000)	
❒	Public Protector Act, 1994 (Act 23 of 1994)	
❒	Basic Conditions of Employment Act, 1997 (Act 75 of 1997)	
❒	Employment Equity Act (EEA), 1998 (Act 55 of 1998)	
❒	Compensation for Occupational Injuries and Disease Act ,1993 (Act 130 of 1993)	
❒	Income Tax Act, 1962	
❒	Public Office Bearers Act , 1998 (Act 20 of 1998)	
❒	Unemployment Insurance Act, 2001 (Act 63 of 2001)	
❒	Unemployment Insurance Contributions Act, 2002 (Act 4 of 2002)	
❒	State Information Technology Agency Act (SITA), 1998 (Act 88 of 1998)	
❒	Broad-Based Black Economic Empowerment Act (B-BBEEA), 2003 (Act 53 of 2003)	
❒	Competition Act (CA), 1998 (Act 89 of 1998)	
❒	Construction Industry Development Board Act (CIDBA), 2000 (Act 38 of 2000)	
❒	Employment Equity Act (EEA), 1998 (Act 55 of 1998)	
❒	Companies Act, 1973 as amended in 2008)	
❒	Prevention and Combating of Corrupt Activities Act, 2003)	
❒	National Environmental Management Act (NEMA), 1998 (Act 107 of 1998)	
❒	National Small Business Act (NSBA), 1996 (Act 102 of 1996)	
❒	Preferential Procurement Policy Framework Act (PPPFA), 2000 (Act 5 of 2000)	
❒	Prevention and Combating of Corrupt Activities Act (PCCAA), 2004 (Act 12 of 2004)	
❒	Prevention of Organized Crime Act, 1998 (Act 121 of 1998)	
❒	Reconstruction and Development Fund Act, 1998 (Act 79 of 1998)	
❒	State Tender Board Act, 1968 (Act 86 of 1968)	
❒	National Road Traffic Act, 1996 (Act 93 of 1996)	
❒	Road Transportation Act, 1977 (Act 74 of 1977)	
❒	Road Transport Management Corporation Act, 1999 (Act 20 of 1999)	

LEGISLATION AFFECTING SCM IN THE MUNICIPALITY		Direct/Indirect impact
❒	Building Standards Act, 1977 (Act 103 of 1977)	
❒	National Building Regulations and Building Standards Act, 1977 (Act 103 of 1997)	
❒	Intelligence Service Act, 2002 (Act 65 of 2002)	
❒	Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005)	
❒	Labor Relations Act, 1995. (Act 66 of 1995)	
❒	Magistrates Act, 1993 (Act 90 of 1993)	
❒	Magistrates Court Act, 1944 (Act 32 of 1944)	
❒	National Archives and Records Service of South Africa Act, 1996 (Act 43 of 1996)	
❒	Occupational Health and Safety Act, 1993 (Act 85 of 1993)	
❒	Protected Disclosures Act (PDA), 2000 (Act 26 of 2000)	
❒	Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act 33 of 2004)	
❒	Skills Development Act, 1998 (Act 97 of 1998)	
❒	Skills Development Levy Act, 1999 (Act 9 of 1999)	
❒	Western Cape Procurement Act, 2010)	
❒	SPLUMA	

PART 1.4: OVERALL OBJECTIVE

1.4.1 OVERALL OBJECTIVES

1.4.1.1 Hessequa Municipality's overall objective of this SCMPPOS is the following:

1.4.1.2 To ensure the efficient, effective and uniform planning for and procurement of all services and goods, required for the proper functioning of the Municipality as well as the sale and letting of assets that conforms to constitutional and legislative principles whilst developing, supporting and promoting historically disadvantaged individuals, black economic empowerment, small, medium and micro enterprises (SMME's) and preferential goals.

1.4.1.3 To ensure the efficient, effective and uniform management and disposal of goods and assets.

1.4.1.4 To ensure good governance through its SCM processes.

1.4.1.5 To prevent SCM System abuse and resultant irregular expenditure.

1.4.2 THE SCM POLICY

Refer to section 111& 112 of the MFMA & SCM TR 2&3

POLICY

1.4.2.1 This SCMPPOS shall give effect to the legislation and the overall objectives stated, through appropriate policy, principles and operational procedures.

1.4.2.2 The entire Municipality's SCM must be done in accordance with this SCMPPOS.

PRINCIPLES

1.4.2.3 Where the National Treasury issue amendments in the interim, those instructions will also be taken into account in the execution of the SCM in addition to the SCMPPOS which must be consequently amended within.

OPERATIONAL

1.4.2.4 The SCMU in the Office of the CFO must keep a repository of all prescripts, norms and best practices and recommend appropriate amendments to the Council.

1.4.3 POLICY ADOPTION AND REVIEW

Refer to section 111 of the MFMA and SCM TR 3

POLICY

1.4.3.1 This SCMPPOS shall be adopted by the Municipal Council and reviewed at least annually.

1.4.3.2 Ensure continuous review and update of the SCMPPOS against prescripts and related legislative frameworks and amendments.

PRINCIPLES

1.4.3.3 The SCMPPOS must be reviewed at least annually to ensure that it is compliant with the legislative environment.

1.4.3.4 When deemed necessary on an *ad hoc* basis, the AO must submit proposals for the amendment of the policy to the Council.

1.4.3.5 On an annual basis, at least a quarter before the adoption of the Municipal Budget, the Head of the SCMU must review the SCMPPOS and submit such to the CFO for consultation with the AO and submission to the Council for adoption.

1.4.3.6 When amending this Policy, the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

OPERATIONAL

1.4.3.7 The SCMPPOS once adopted, must be forwarded by the SCMU to the Provincial Treasury in compliance with SCM TR 3(2) (c).

PART 1.5: PROCUREMENT PRINCIPLES

1.5.1 PROCUREMENT PRINCIPLES

Refer to section 112 of the MFMA and SCM TR 2

POLICY

1.5.1.1 The Municipality hereby adopts the procurement principles as noted hereunder:

Transparency	The procurement process shall be open and predictable and shall afford each prospective bidder timely access to the same and accurate information
Equal treatment	All bidders and providers shall be treated equally throughout the whole procurement process and shall be given access to the same information.
Effectiveness	The Municipality shall strive for SCM system effectiveness and shall carry out its procurement processes as cost-effectively as possible while meeting the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement.
Efficiency	The Municipality shall strive to standardise and simplify procedures where appropriate to enhance SCM system effectiveness and shall carry out its SCM processes as cost-effectively and efficiently as possible. The Municipality shall strive to build relationships with providers, shall ensure good working practices and shall encourage innovative solutions for providers
Competitiveness	The Municipality shall satisfy its requirements through competition unless there are justifiable reasons to the contrary.
Fairness	All bidders and contractors shall be dealt with fairly and without unfair discrimination. Unnecessary constraints shall not be imposed on bidders/contractors and commercial confidentiality shall be protected.
Ethics	All suppliers shall be treated equally whilst promoting certain empowerment objectives, all stakeholders shall conduct business and themselves professionally, fairly, reasonably and with integrity, all interests shall be disclosed and all breach shall be reported.
Proportionality	The product/service requirements stipulated in the specification/terms of reference and the

	qualification requirements attached thereto must be appropriate, necessary and in reasonable proportion to the product/service being procured.
Uniform application	The Municipality shall ensure the application of a SCMPPOS and a streamlined SCM process and documentation that is uniformly applied by the Municipality, all things being equal. The procurement process shall be simple and adaptable to advances in modern technology to ensure efficiency and effectiveness.
Accountability	Each practitioner shall be accountable for their decisions and actions relative to their SCM responsibilities, the SCM process as well as in the implementation of concluded contracts. The Municipality shall have a system, when warranted by circumstances, to investigate and hold liable both employees and relevant private parties dealing with the Municipality, for their decisions and actions relative to their procurement responsibilities, the procurement process as well as in the implementation of concluded contracts.
Openness	The Municipality shall ensure a procurement process and a subsequent contract award and implementation according to the predetermined specification in line with the best practice procurement principles.
Value for money	The Municipality shall achieve value for money through the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements while maximizing efficiency, effectiveness and flexibility.
	The Municipality shall apply the following TCO philosophy to the procurement of goods and services in achieving value for money.
	TCO = Price + Administration (maint. and process) + Quality/Usage + Supplier Value-add.
Commitment to safety, health and the environment	The Municipality is committed to the health and safety of its personnel and its providers in the application of its SCM process.
	The Municipality is committed to the preservation of the environment, minimising pollution and the improved use of natural resources in the application of its SCM processes and more specifically in the design of the specifications/terms of reference for each requirement.
	The Municipality shall apply preventative measures in situations of scientific uncertainty where a course of action could harm the environment.
Black Economic Empowerment	The Municipality is committed to the promotion of Black Economic Empowerment..
Preferential Procurement Policy	The Municipality shall implement the preferential system and its preferential procurement policy (once adopted) in the allocation of contracts for categories of services providers such as previously disadvantaged individuals, women and small business.
Local Sourcing	The Municipality is committed to give preference to locally sourced products and services whenever possible.
Resolution of Bid Award Disagreements	Should the Bid Adjudication Committee and or the AO not agree with any recommendations made by the Bid Evaluation Committee, only the AO may make the final award within 10 working days, subject to the provisions of section 114 of the MFMA.
Local Production and Content	The Municipality must, in case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with a specific tendering condition that only locally produced goods, services or works of locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.

	National Treasury will issue instructions, circulars and guidelines with specific reporting mechanisms to ensure compliance with above mentioned.
	Where there is no designated sector, the Municipality may include, as a specific tendering condition, that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered, on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the Department of Trade and Industry.
	All tenders issued in terms of PPPFA regulation 9 must be measurable and audited.
	A two stage bidding process may be followed, where the first stage involves functionality and minimum threshold for local production and content and the second stage price and B-BBEE with the possibility of price negotiations only with the short listed bidder/s

PART 1.6: SCM SYSTEM

1.6.1 SCM SYSTEM

Refer to section 115 of the MFMA and SCM TR 9

POLICY

1.6.1.1 The Accounting Officer shall develop and implement an effective and efficient SCM system for:

- The acquisition of goods and services
- The disposal and letting of assets and goods no longer required.

1.6.1.2 The system shall be fair, equitable, transparent, competitive and cost-effective.

1.6.1.3 The system shall be consistent with the PPPFA and the B-BBEE Act.

1.6.1.4 The system shall provide for at least the following:

- Demand management.
- Acquisition management.
- Logistics management.
- Disposal management.
- Risk management.
- Regular assessment of supply chain performance.

PRINCIPLES

1.6.1.5 The SCMPPOS must, in the case of procurement through a competitive and other relevant bidding process, provide for:

- Bidding procedures.
- The establishment, composition and functioning of bid specification, evaluation and adjudication committees.
- Selection of bid committee members.
- Adjudication of bids through a bid adjudication committee.
- Approval of bid evaluation committee recommendations by the Bid Adjudication Committee for bids up to R 10m and the AO for bids exceeding R 10m.

1.6.1.6 The SCM system must be seen as an integrated system and takes into account the main influencers such as the suppliers, clients, information and inventory flow.

OPERATIONAL

1.6.1.7 The SCMPPOS substantially documents the municipal SCM System and must be applied together with the MFMA and SCM TR.

PART 1.7: PLANNING

1.7.1 PLANNING

Refer to Municipal Systems Act, chapter 5, MFMA, chapter 4 and SCM TR 3

POLICY

1.7.1.1 The SCMPPOS of the Municipality must complement its IDP and SDBIP

PRINCIPLES

1.7.1.2 Management must align the SCM strategies with their Municipal departmental strategies

OPERATIONAL

1.7.1.3 The SCMU must:

- Align the SCM strategies with the relevant SCM structures, relationships and change processes.
- Annually analyse the contribution of SCM strategies as part of the Municipal SDBIP and implement related improvements

PART 1.8: SCM FUNCTION, UNIT AND CAPACITY BUILDING

1.8.1 SCM FUNCTION, UNIT AND CAPACITY BUILDING

Refer to section 119 of the MFMA and SCM TR 7 & 8

POLICY

1.8.1.1 The AO must establish a separate SCMU which operates under the direct supervision of the CFO to implement its SCM system.

1.8.1.2 The AO shall ensure that officials implementing the SCM system are trained and deployed in line with the National Treasury prescripts and guidelines.

1.8.1.3 National Treasury shall regulate the training.

1.8.1.4 National Treasury must validate the training material of providers.

PRINCIPLES

1.8.1.5 The separate SCMU must operate under the direct supervision of the CFO.

1.8.1.6 The section Supply Chain Management is responsible for the co-ordination and oversight of the supply chain management function. It is headed by the SCM manager and falls under the management of the Municipality's CFO.

1.8.1.7 The AO and all other officials of the Municipality involved in the implementation of the SCMPPOS must meet the prescribed competency levels.

1.8.1.8 The Municipality must therefore provide resources or opportunities for the training of relevant officials to meet the prescribed competency levels and training will be provided for at least the following officials:

- Senior management
- Practitioners and users
- New entrants – new appointees irrespective of the level at which they are appointed.

1.8.1.9 The training material must be of an acceptable level of quality and in accordance with the relevant SCM policy reforms and legislation and must be validated by National Treasury.

1.8.1.10 A phased-in implementation strategy as outlined below could be followed:

- Short term through Introduction to SCM.
- Medium term through training in all elements of SCM as well as training in specialised skills.

OPERATIONAL

1.8.1.11 The SCMU must provide for the main functions of the SCM system as well as administrative support

services to the Bid Specification, Evaluation and Adjudication Committees and other related structures.

1.8.1.12 The SCMU is to execute any other functions as prescribed by the relevant Treasuries from time to time.

1.8.1.13 Specific SCM capacity development requirements of the SCMU practitioners will be identified and address within the following model:



Figure 1.8.1: SCM training model

1.8.1.14 SCM training programmes will be aligned as per the Municipal skills development plan and relevant treasury programmes.

1.8.1.15 Additional training can be solicited from the SCMU in Office of the CFO.

1.8.1.16 The SCMU will facilitate training on the SCMPPOS on request and where feasible.

1.8.1.17 Evaluation reports in this regard as well as details of all officials who have successfully completed a course must be kept for record purposes.

PART 1.9: AUTHORITY TO EXECUTE

1.9.1 DELEGATION OF AUTHORITY

Refer to section 59 of the MSA, sections 79 and 82 of the MFMA and SCM TR 4 & 5

POLICY

1.9.1.1 All SCM activities shall be executed in accordance with pre-established levels of authority through delegations and sub-delegations to ensure control and division of responsibility.

1.9.1.2 Delegations shall be in writing to a specific individual or the holder of a post and shall be in line with the Delegation Framework.

1.9.1.3 A delegation shall be subject to such limitations and conditions as the Council, AO and/or CFO may impose in a specific case.

1.9.1.4 The specific provisions and limitations as prescribed in SCM TR 4 and 5 must at all times be adhered to.

1.9.1.5 The AO and/or CFO is entitled to confirm, vary or revoke any decision taken in consequence of a delegation, provided that no such variation or revocation of a decision should detract from any rights that may have accrued as a result of the decision.

PRINCIPLES

1.9.1.6 The Council hereby delegates such additional powers and duties to the AO so as to enable the AO:

- To discharge the SCM responsibilities conferred on AO in terms of –
  - Chapter 8 or 10 of the MFMA; and
  - This Policy.
- To maximise administrative and operational efficiency in the implementation of this Policy;
- To enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of this Policy; and
- To comply with his/her responsibilities in terms of Section 115 and other applicable provisions of the MFMA.

1.9.1.7 No individual official should be in a position to take a decision in isolation regarding the award of a bid.

1.9.1.8 The AO may not sub-delegate any SCM powers or duties to any person who is not an official of the Municipality or to a committee which is not exclusively composed of officials of the Municipality.

1.9.1.9 The AO may sub-delegate the power to make a final award above R2 million but not exceeding R10 million, but only to the CFO, a senior manager or a BAC of which the CFO or a senior manager is a member.

1.9.1.10 The word 'delegation' is derived from Latin; delegate meaning 'to send from', which in turn means that when delegating, work is being sent 'from' one person 'to' someone else.

1.9.1.11 Delegation is the process through which a portion of authority assigned to an official is passed on to a lower level official who in turn has the authority to deploy resources in his or her area of responsibility to execute a specific task.

1.9.1.12 In this context:

- 'Accountability' and 'Responsibility' means that the official who delegates authority remains accountable and the lower level official must be held responsible for the execution of the delegated power or authority.
- 'Centralisation' considers where the responsibility for decision-making authority is vested, i.e. the degree to which decision-making is concentrated at a single point in the organisation.
- 'Decentralisation' is when authority is widely dispersed within the organisation.
- Centralisation and decentralisation does not refer to geographical dispersion.

1.9.1.13 The delegation process is essential to every Municipality as this is a mechanism through which it can ensure the achievement of effective, efficient and economical service delivery by officials.

1.9.1.14 Management processes are dependent on the concept of delegation. It is therefore important that this concept and its advantages during implementation is understood by all parties involved. Some of the key advantages are the following:

1.9.1.15 Managers who allow their staff to accept more responsibilities are in a better position themselves to accept more responsibilities and higher levels of authority.

1.9.1.16 Delegations encourage officials to exercise judgment and to accept accountability.

1.9.1.17 Better decisions are often taken by officials who operate closer to implementation.

1.9.1.18 Decision-making processes are quicker and enhances officials' confidence to make future decisions.

1.9.1.19 The Municipal Financial and SCM delegations must be designed to distinguish between:

- Strategic, tactical and operational level delegations.
- Different activity requirements in exercising a delegated power, being to initiate, process, recommend, approve, execute and monitor the execution of a delegated power.
- Different principles guiding the appropriate delegation level, being the management impact level, post level and frequency level.
- Whether the provision is mandatory or allows for discretion in terms of implementation.
- Different risk impact levels when executing a delegated power, being, extensive, moderate or limited, including the area of impact.

1.9.2 RESPONSIBILITY OF OFFICIALS

Refer to sections 77, 112(1)(k) and 117 of the MFMA and SCM TR 44&46

POLICY

1.9.2.1 Each official shall carry out its activities within its area of responsibility.

1.9.2.2 Each official shall take appropriate steps to prevent any unauthorised, irregular, fruitless and wasteful expenditure in its area of responsibility.

PRINCIPLES

1.9.2.3 A person in the relevant division or department holding the rank to which the authority has been delegated or the person with the authority appointed for the task must carry it out satisfying the various SCM requirements, including the ability to commit the Municipality.

1.9.2.4 All activities not delegated to a person in the relevant division or the SCMU holding the rank to which the authority has been delegated, must be forwarded upwards to the person holding the required rank or to the relevant delegated structure.

1.9.2.5 Officials acting on behalf of others, may execute the delegations of such post, subject to written appointment.

1.9.3 PARTICIPATION OF ADVISORS

Refer to SCM TR 5, 27 & 29

POLICY

1.9.3.1 Specialist advisors may assist in the execution of the SCM function.

1.9.3.2 The services must be obtained through the SCM System.

1.9.3.3 No advisor may form part of the final decision-making process regarding bids.

1.9.3.4 No decision-making authority can be delegated to an advisor.

PRINCIPLES

1.9.3.5 The use of specialist advisors for any SCM function is allowed except from making final decisions

relating to a bid, which function only Municipal officials must perform.

PART 1.10: ROLES AND RESPONSIBILITIES

1.10.1 SCM FOCUS

Refer to section 117 of the MFMA and SCM TR 6

POLICY

1.10.1.1 The roles and responsibilities of all the structures hereunder are to be defined only from the perspective of SCM and as prescribed.

1.10.2 MUNICIPAL COUNCIL

Refer to section 117 of the MFMA and SCM TR 6

POLICY

1.10.2.1 Without interfering in the actual procurement processes, to ensure that the Municipality has and maintains:

- An appropriate SCM system, which is fair, equitable, transparent, competitive and cost-effective.
- Effective, efficient and transparent systems of financial and risk management and internal control.

1.10.2.2 To act with fidelity, honesty, integrity and in the best interest of the Municipality in managing its financial affairs, including the avoidance of conflict of interest and provision of safeguards against favoritism, improper practices and opportunities for fraud, theft and corruption.

1.10.2.3 To prevent any prejudice to the financial interests of the Municipality or the State.

1.10.2.4 To take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses as a result of criminal conduct and expenditure not complying with the operational policies of the Municipality.

1.10.2.5 To ensure that expenditure of Municipality related to SCM is in accordance with the approved budget.

1.10.2.6 To delegate in writing any of the powers, functions or duties entrusted, delegated, conferred or imposed on it by the Constitution and the MFMA, to the Accounting Officer.

1.10.2.7 To approve the allocation of funds to strategic goals of the Municipality.

1.10.2.8 To oversee the implementation of the SCMPPOS.

1.10.3 ACCOUNTING OFFICER

Refer to sections 60, 79 & 115 of the MFMA and SCM TR 3, 5, 29, 48 & 50

POLICY

1.10.3.1 To advise on the establishment of strategies in compliance with the legislation.

1.10.3.2 To act as a sounding board for the Council on the translation of the SCM strategy into business objectives and operational plans.

1.10.3.3 To grant final approval of certain bids not delegated to any other official or structure and bids subject

to certain conditions.

1.10.3.4 To delegate or sub-delegate in writing any of the powers, functions or duties entrusted, delegated, conferred or imposed on it by the Constitution and the MFMA, to the CFO.

1.10.3.5 To manage SCM processes in the event of uncertainty or dispute between different award structures.

1.10.4 CHIEF FINANCIAL OFFICER

Refer to sections 80, 81 & 82 of the MFMA and SCM TR 7

POLICY

1.10.4.1 To advise on the establishment of strategies in compliance with the legislation.

1.10.4.2 To act as a sounding board for the Council on the translation of the SCM strategy into business objectives and operational plans.

1.10.4.3 To provide guidance on the establishment of proposals, policies and the operational budget.

1.10.4.4 To provide guidance and options in terms of operational expenditure.

1.10.4.5 To establish and maintain the Municipal SCMPPOS.

1.10.4.6 To establish and maintain the Municipal SCMU.

1.10.4.7 To take all reasonable steps to ensure that proper mechanisms and separation of duties in the SCMPPOS are in place to minimize the likelihood of fraud, corruption, favoritism and unfair and irregular practices.

1.10.4.8 To sub-delegate in writing any of the powers, functions or duties entrusted, delegated, conferred or imposed on it by the Constitution, MSA and the MFMA, to an official in the Office of the CFO.

1.10.5 LINE FUNCTION/USERS

Refer to section79 of the MFMA and SCM TR 2, 12, 26, 38, 44, 45, 46 & 47

POLICY

1.10.5.1 To link the operational budget with SCM planning.

1.10.5.2 To manage SCM activities in so far as it impacts on the budget holder's expenditure items.

1.10.5.3 To establish and maintain user and/or supplier specifications and requirements in relation to SCM within its area of responsibility.

1.10.5.4 To establish and maintain contract management and project management activities in relation to SCM within its area of responsibility.

1.10.5.5 To take all reasonable steps to ensure that proper mechanisms and separation of duties between the SCMU and line function unit to minimize the likelihood of fraud, corruption, favoritism and unfair and irregular practices.

1.10.5.6 To sub-delegate in writing any of the powers, functions or duties entrusted, delegated, conferred or imposed on it by the Constitution and the MFMA, to an official in the relevant line-function unit.

1.10.6 SCMU

Refer to section 79 of the MFMA and SCM TR 7

POLICY

1.10.6.1 To develop and implement strategies to ensure optimization of the supply chain management unit's service delivery, resource utilization and client satisfaction

1.10.6.2 Develop necessary policies such as petty cash policy, asset management policy, disposal policy, etc or other procedures required to enhance the implementation of supply chain management

1.10.6.3 Provide strategic direction and operational planning for the SCMU

1.10.6.4 Manage provisioning, procurement, logistics, risk and performance management

1.10.6.5 Co-ordinate and oversee the functions of demand, acquisitions, logistics, risks and performance management

1.10.6.6 Responsible for SCM including evaluation and adjudication as delegated, research and adherence to supply chain management policy, compilation of financial and other reports as required, auditing of supply chain allocation, ensure proper statistical and administration and cost and management accounting

1.10.6.7 Liaise with external auditors and attend to audit queries and address them accordingly

1.10.6.8 Advise the bid committees on procurement processes and prescripts

1.10.6.9 Approves and sign letters of acceptance to prospective bidders

1.10.6.10 Develop a delegation schedule for SCMU

1.10.6.11 Facilitate training needs for all SCM practitioners and ensure that each official is trained accordingly

1.10.6.12 Assist the AO and CFO to at least annually review the SCMPPOS

PART 1.11: SCM GOVERNANCE

1.11.1 ETHICS

Refer to section 118 of the MFMA and SCM TR 46

POLICY

1.11.1.1 The Municipality commits itself to a policy of fair dealing and integrity in conducting its SCM activities.

1.11.1.2 All SCM practitioners and role players in the SCMPPOS are required to promote mutual trust and respect and an environment where business can be conducted in a fair and reasonable manner and with integrity.

1.11.1.3 All SCM practitioners should ensure that they perform their duties efficiently, effectively and with

integrity, in accordance with the relevant legislation and regulations.

1.11.1.4 The Code of Conduct for SCM practitioners as contained in National Treasury's Practice Note Number SCM 4 of 2003 will be maintained on an annual basis and shall direct all SCM practitioners and role players in their conduct within and with the Municipality. Non-compliance shall be subject to the appropriate disciplinary action.

1.11.1.5 The AO shall take all reasonable steps to prevent abuse of the SCMPPOS.

1.11.1.6 Anyone who becomes aware of a breach of or failure to comply with any aspect of the SCMPPOS, must immediately report the breach or failure to the AO or his/her delegated authority in writing.

1.11.1.7 All allegations against a practitioner or any other role player, of corruption, improper conduct or compliance failure with the SCMPPOS shall be investigated by the AO or his/her delegated authority who will, when justified:

- Take steps against such official or other role player and inform the relevant Treasury of such steps.
- Report any conduct that may constitute an offence to the SAPS.

PRINCIPLES

1.11.1.8 The AO or his/her delegated authority shall take all reasonable steps to prevent abuse, corruption and collusion through at least regular internal audit reviews, and external audit as well as risk assessments in the supply chain environment.

1.11.1.9 The AO or his/her delegated authority shall ensure that the Municipality considers all complaints received and shall respond thereto in a timely manner.

OPERATIONAL

1.11.1.10 All SCM practitioners and other role players must comply with the highest ethical standards in order to promote:

- Mutual trust and respect.
- An environment where business can be conducted with integrity and in a fair and reasonable manner.
- Preserve the highest standards of honesty, impartiality and objectivity.
- Maintain the highest level of impartiality and objectivity.

1.11.1.11 The SCM practitioners and role players:

- Must treat all providers or potential providers equally whilst still promoting the B-BBEE Act and the PPPFA.
- May not use their position for private gain or to improperly benefit another person.
- Should ensure that officials are scrupulous in their use of organizational funds and property.

1.11.1.12 All allegations of corruption, improper conduct or compliance failure shall be reported to the AO or his/her delegated authority and investigated by an appropriate individual/organization appointed by the AO or his/her delegated authority

1.11.1.13 All bidders and contractors shall be made aware of the ethical standards of the Municipality, its expectations of them and the consequences of non-compliance. The application of these standards by bidders that the Municipality does business with must be promoted.

1.11.2 DECLARATION OF INTEREST

Refer to sections 112 (1)(j), 117 & 118 of the MFMA and SCM TR 44, 45, 46 & 47

POLICY

1.11.2.1 If a SCM practitioner or other role player, or close family member, partner or associate of such practitioner or other role player, has any private or business interest in any contract to be awarded, that practitioner or other role player must:

1.11.2.2 Disclose that interest.

1.11.2.3 Withdraw from participating in any manner whatsoever in the process relating to the contract.

1.11.2.4 A SCM practitioner must recognize and disclose any conflict of interest that may arise.

PRINCIPLES

1.11.2.5 The AO or his/her delegated authority shall determine whether the interest declared, constitutes a conflict of interest in circumstances where it is not clear that it presents a conflict.

1.11.2.6 SCM TR 44 must be maintained at all times.

OPERATIONAL

1.11.2.7 All SCM practitioners and other role players must recognise and disclose any interest and determine any possible conflict that may arise.

1.11.2.8 SCM practitioners, to the extent required by their position, should declare any business, commercial and financial interest or activities undertaken for financial gain that may raise a possible conflict of interest.

1.11.2.9 SCM practitioners or other role players should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

1.11.2.10 SCM practitioners should not take improper advantage of their previous office after leaving their official position.

1.11.2.11 The SCMU must maintain a template and register for interest declarations.

1.11.3 EQUAL TREATMENT

POLICY

1.11.3.1 All SCM practitioners and other role players must treat all suppliers and potential suppliers equitably.

PRINCIPLES

1.11.3.2 All Municipal officials associated with SCM, particularly those dealing directly with service providers/suppliers or potential service providers/suppliers are required to:

- Provide all assistance in the elimination of fraud and corruption.
- Be fair, efficient, firm and courteous.
- Achieve the highest professional standards in the adjudication of contracts

1.11.4 ACCOUNTABILITY

POLICY

1.11.4.1 A SCM practitioner and other role players must be scrupulous in their use of public property

PRINCIPLES

1.11.4.2 The Accounting Officer or his/her delegated authority is fully responsible and should be held accountable for any expenditures relating to SCM within their area of responsibility as well as such powers or duties assigned or delegated.

OPERATIONAL

1.11.4.3 All SCM practitioners and other role players must be accountable for their decisions and actions to the public as well as to the Municipality within their area of responsibility as well as such powers or duties assigned or delegated to them.

1.11.4.4 Practitioners should not make any false or misleading entries into the accounting system related to SCM activities for any reason whatsoever.

1.11.5 OPENNESS

POLICY

1.11.5.1 Practitioners should give reasons for their decisions and actions, subject to the provisions of PAIA.

1.11.6 CONFIDENTIALITY

POLICY

1.11.6.1 Any information that is the property of the Municipality or its suppliers/service providers should be protected at all times.

1.11.6.2 No information regarding any bid/contract/bidder/contractor may be revealed as such an action will infringe on the relevant bidder's/contractors personal rights as per the provision of PAIA.

1.11.7 INDEPENDENCE

POLICY

1.11.7.1 All SCM practitioners and role players may not use their position for private gain or to improperly benefit another person.

1.11.7.2 If a SCM practitioner's or other role player's family member, partner or associate of such official or role player, has any private or business interest in any bid to be submitted or to be adjudicated, such interest must be disclosed and recorded and the party with the interest must withdraw from participating in the evaluation process relating to the bid if there is a conflict of interest.

1.11.8 GIFTS AND HOSPITALITY

Refer to SCM TR 47

POLICY

1.11.8.1 SCM practitioners, municipal officials and role players must ensure that no-one compromises the credibility or integrity of the SCM system through the acceptance of any inducement or reward for or in connection with the award of the contract, or any reward, gift, favour or hospitality. The AO must promptly report any alleged contravention to the NT for consideration whether the offering person,

and any representative or intermediary through which such person is alleged to have acted, should be listed in the NT's database of persons prohibited from doing business with the public sector.

1.11.8.2 The Municipality shall maintain a gift register at the Legal and Compliance Section in the Office of the AO.

PRINCIPLES

1.11.8.3 The Municipality shall maintain a gift register in which gifts as well as hospitality received must be recorded in line with the Municipal policy and practice.

1.11.8.4 The current practice states that all gifts and hospitality valued at below R350 should be entered into the gift register.

1.11.8.5 No gifts or hospitality valued at more than R 350 may be accepted. =

OPERATIONAL

1.11.8.6 Officials should exercise caution in the acceptance of any gifts and officials are prohibited from accepting any gifts or hospitality from any potential suppliers, when in the process of inviting bids.

1.11.8.7 Municipal officials may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, valued higher than R350.

1.11.8.8 Municipal officials must declare to the AO details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person.

1.11.9 FRAUD AND CORRUPTION

Refer to SCM TR 38

POLICY

1.11.9.1 The provisions of the Prevention and Combating of Corrupt Activities Act, 2004 shall be adhered to.

1.11.9.2 The SCMU must ensure that all officials, clients and other stakeholders (including providers) are made aware of the implications of the Prevention and Combating of Corrupt Activities Act.

1.11.9.3 Fraud prevention and anti-corruption plans shall be instituted.

1.11.9.4 A SCM practitioner or other role player must assist the AO or his/her delegated authority in combating corruption and fraud in the SCMPPOS.

1.11.9.5 The AO or his/her delegated authority must reject a proposal for adjudication if he/she determines that the supplier/service provider recommended for adjudication, has engaged in corrupt or fraudulent activities in competing for the contract in question.

PRINCIPLES

1.11.9.6 The Constitution and recent legislation dealing with transparency and anti-corruption measures strengthen Government's ability to combat corruption and also protects employees from making disclosures against their employers in both the public and private sectors.

1.11.9.7 The AO or his/her delegated authority, may, when applicable, include a provision in the contract agreement, requiring contractors to permit the AO or his/her delegated authority to inspect their

accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the AO in order to monitor and prevent corrupt activities.

1.11.9.8 Contractors shall observe the highest standard of ethics during the selection and execution of the contract.

1.11.9.9 Contractors must assist in combating corruption in SCM in line with the Prevention and Combating of Corrupt Activities Act, by not giving, receiving or soliciting any item of value to influence the action of an official dealing with SCM.

OPERATIONAL

1.11.9.10 Contractors and Municipal officials must assist in combating procurement fraud through awareness, vigilance and consistent assessment by not misrepresenting facts in order to influence a procurement process or the execution of a contract to the detriment of the Municipality including collusive practices.

1.11.9.11 All SCM practitioners and other role players must assist the AO or his/her delegated authority in combating corruption and fraud.

1.11.9.12 The SCMU must consider the relevant registers of such tender defaulters on the National Treasury database.

1.11.10 COMBATIVE PRACTICES

Refer to section 112 of the MFMA and SCM TR 38

POLICY

1.11.10.1 The use of combative practices shall not be allowed.

PRINCIPLES

1.11.10.2 Combative practices are unethical, illegal and prohibited and be avoided at all cost. They include but are not limited to:

- Suggestions of fictitious lower quotations.
- Reference to non-existent competition.
- Exploiting errors in bids.
- Soliciting bids from bidders whose names appear on the list of restricted bidders/suppliers/persons.

1.11.11 INTERNAL ABUSE OF THE PPPFA

Refer to section 112(1)(n) of the MFMA and SCM TR 38

POLICY

1.11.11.1 The AO or his/her delegated authority shall ensure that the SCMPPOS is not abused for any purpose, neither for the benefit of the Municipality nor for the benefit of any potential provider/contractor or individual.

1.11.11.2 All conducts, dealings and actions are to be *bona fide*.

1.11.11.3 Any employee suspected of acting contrary to this policy, will be dealt with in terms of the disciplinary code of the Municipality

PRINCIPLES

1.11.11.4 No official of the Municipality should be involved in or promote the abuse of the preferential procurement system.

1.11.11.5 Internal control mechanisms should have as objective to at least try and avoid abuse of the system internally.

1.11.12 EXTERNAL ABUSE OF PPPFA

POLICY

1.11.12.1 The Municipality shall vigorously pursue all legal remedies available in the event that the SCMPPOS is abused, particularly through for example, but not limited to the following ways:

- That a provider or contractor is suspected of contravening the PPPFA.
- Has promised, offered or given a bribe during the bidding process and/or after conclusion of the contract.
- Has acted in a fraudulent manner or in bad faith or in any other improper manner during the bidding process or after conclusion of the contract.
- That an agreement was entered into with the contractor on the strength of information furnished by him, and it became apparent after conclusion of such agreement that the information provided was incorrect.

1.11.12.2 To protect both parties to an agreement, potential providers, contractors and Municipal officials must be made aware of the implications of any contraventions via the special conditions of contract and the applicable paragraphs in the GCC or CIDBA contract, in the case of construction or infrastructure procurement.

1.11.13 FRONTING

PPPFA Regulations, 2011

POLICY

1.11.13.1 The Municipality shall ensure that, where possible, fronting is identified before a contract is awarded.

1.11.13.2 Where, after award of a contract it becomes evident that the award made to the organisation based on incorrect information constituting fronting, the appropriate action is to be taken in accordance with all legal remedies available as well as the provisions of the PPPFA are adhered to.

PRINCIPLES

1.11.13.3 Fronting is inseparably linked to equity and therefore largely finds its application in those particular circumstances.

1.11.13.4 Where, after award of a contract it becomes evident that the award made to the organisation based on incorrect information constituting fronting, the appropriate action is to be taken in accordance with all legal remedies available, especially the Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004, the Promotion of Administrative Justice Act, Act No 3 of 2000 as well as Regulation 13 of the PPPFA is adhered to i.e. equity ownership, active management and active

control.

1.11.13.5 Where the Municipality becomes aware of a possible fronting case, the following process, should be followed as a starting point:

(i) The Municipality must inform the bidder/contractor of the alleged/suspected offence, i.e.

- *That he is suspected of contravening the provisions of the PPPFA or;*
- *Has promised, offered or given a bribe during the bidding process and/or after conclusion of contract; or*
- *Has acted in a fraudulent manner or in bad faith or in any other improper manner during the bidding process or after conclusion of contract; or*
- *That an agreement was entered into with the contractor on the strength of information furnished by him, and it became apparent after conclusion of such agreement that the information provided was incorrect.*

(ii) The bidder/contractor must be informed of the recourse sought.

(iii) The bidder/contractor must also be afforded an opportunity to state their case. This is the application of the principles of natural justice, with particular reference to the *audi alteram partem* rule.

(iv) The Municipality must follow the requirements for procedural fairness as outlined in Section 3 of the Promotion of Administrative Justice Act, 3 of 2000. Briefly it states:

- *An administrator (AO or his/her delegated authority) must give a person adequate notice of the nature and purpose of the proposed administrative action.*
- *A reasonable opportunity to make representations.*
- *A clear statement of the administrative action.*
- *Adequate notice of any right of review or internal appeal, where applicable.*
- *Adequate notice of the right to request reasons in terms of Section 5 of PAJA.*

1.11.14 SCM ABUSE

Refer to SCM TR 38, 49 and 50 and MFMA circular 68/2013

POLICY

1.11.14.1 The Municipality must establish a mechanism to receive and consider complaints regarding alleged non-compliance with the prescribed norms and standards; and

1.11.14.2 To make recommendations for remedial actions to be taken if non-compliance of any norms and standards is established, including recommendations of criminal steps to be taken in the case of corruption, fraud or other criminal offences.

1.11.14.3 The AO must reject the bid of any bidder if that bidder or any of its directors has been convicted for fraud or corruption during the past 5 years.

PRINCIPLES

1.11.14.4 The Legal Services Unit must issue a standard operating procedure to -

a) Establish an independent and impartial point of access for the:

(i) Reporting, investigation, determination and treatment of SCMPPOS abuse, -disputes, -

objections, -complaints or –queries.

(ii) Measuring of performance output of the SCMU.

b) Identify an independent Committee/Person to promote, monitor, report and advise the AO or delegated authority on the fairness, equitability, transparency, competitiveness and cost-effectiveness of the SCMPPOS whilst achieving the following:

(i) Identify and manage fronting.

(ii) Monitor and prevent SCMPPOS abuse.

(iii) Receive, investigate and rule on complaints, objections, enquiries or disputes.

(iv) Instill SCM best practice.

(v) Prevent and treat fraudulent activities.

(vi) Prevent and treat irregular expenditure.

(vii) Strengthen the control environment.

(viii) Prevent the undermining of the financial management system.

(ix) Assist management to appropriately act on SCMPPOS abuse and complaints incidents.

(x) To strengthen the ability to manage the SCMPPOS.

c) Establish a mechanism to independently review and advise the AO or delegated authority on the determination of '*Liability in Law'* of any perpetrator abusing the SCMPPOS.

1.11.14.5 In the case of SCMPPOS abuse, where appropriate, the:

- Bidder or person will be disqualified from the bidding process;
- Municipality will recover all costs, losses, or damages it has suffered as a result of the person's conduct;
- Municipality will cancel the contract and claim any damages which has have suffered as a result of having to make less favorable arrangements due to such cancellations;
- Municipality will restrict the bidder/contractor, and shareholders and directors, or only shareholder and directors who acted on fraudulent basis.
- Matter will be forwarded for criminal prosecution.

1.11.14.6 Detail of any restrictions imposed on bidders of contractors must be forwarded to National Treasury for inclusion in the centralized database of restricted suppliers.

1.11.14.7 Follow due process before bidder is listed on National Treasury's database for restricted suppliers.

1.11.14.8 Give cognizance of "listen to other side" rule (audi alterem partem).

1.11.14.9 Once the above mentioned has been followed the bidder must be afforded sufficient opportunity to correct any transgressions or remedy any breaches.

OPERATIONAL

1.11.14.10 The Legal services unit must develop and maintain a SOP that contains the processes and procedures relevant in detecting and investigating SCMPPOS abuse as well as the treatment thereof, subject to the Policy and Principle directions provided.

1.11.15 DISPUTES, COMPLAINTS, ENQUIRIES AND OBJECTIONS MECHANISM

Refer SCM TR 21(e), 49 & 50 and MFMA circular 68/2013

POLICY

1.11.15.1 Bidders are allowed the opportunity to lodge an objection or complaint against the decisions of the Municipality within a period of 14 (*working*) days of the Municipal decision or action.

1.11.15.2 This process does not constitute an APPEAL and the provisions of SCM TR 50 must be adhered to in order to respond to objections or complaints received in this regard.

1.11.15.3 The AO may appoint an independent and impartial person, not directly involved in the SCM processes:

- To assist in the resolution of disputes between the Municipality and other persons regarding –

  (i) any decisions or actions taken in the implementation of the supply chain management system; or

  (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
- To deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- Suppliers must provide details of the reasons for their appeal including any non-compliance with this Policy, the MFMA and related legislation. The Accounting Officer shall provide written acknowledgement of the receipt of appeals to the appellant and endeavour to finalise appeals within 10 working days of their receipt. Where this is not possible, the Accounting Officer shall advise the appellant in writing of the reasons for the delay.
- If the appeal is based on a technically complex matter, the Accounting Officer may engage an impartial external advisor, provided that their engagement is compliant with this Policy and sufficient budgetary provision exists. The Accounting Officer is not bound by any opinion provided.
- The Accounting Officer will decide if an appeal constitutes sufficient grounds for delay of procurement from the approved supplier, and if a delay is practical. If the Accounting Officer determines there are grounds for delay, the approved supplier will be advised in writing of the reasons for the delay.

1.11.15.4 When a ruling on an appeal has been made, the Accounting Officer will advise the appellant in writing of the outcome.

1.11.15.5 The Accounting Officer, or another official designated by the Accounting Officer, is responsible for assisting the appointed person to perform his or her functions effectively.

1.11.15.6 The person appointed must –

- strive to resolve promptly all disputes, objections, complaints or queries received; and
- submit monthly reports to the Accounting Officer on all disputes, objections, complaints or queries received, attended to or resolved.

1.11.15.7 A dispute, objection, complaint or query may be referred to the relevant Provincial Treasury if –

- the dispute, objection, complaint or query is not resolved within 60 days; or
- no response is forthcoming within 60 days.

1.11.15.8 If the Provincial Treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

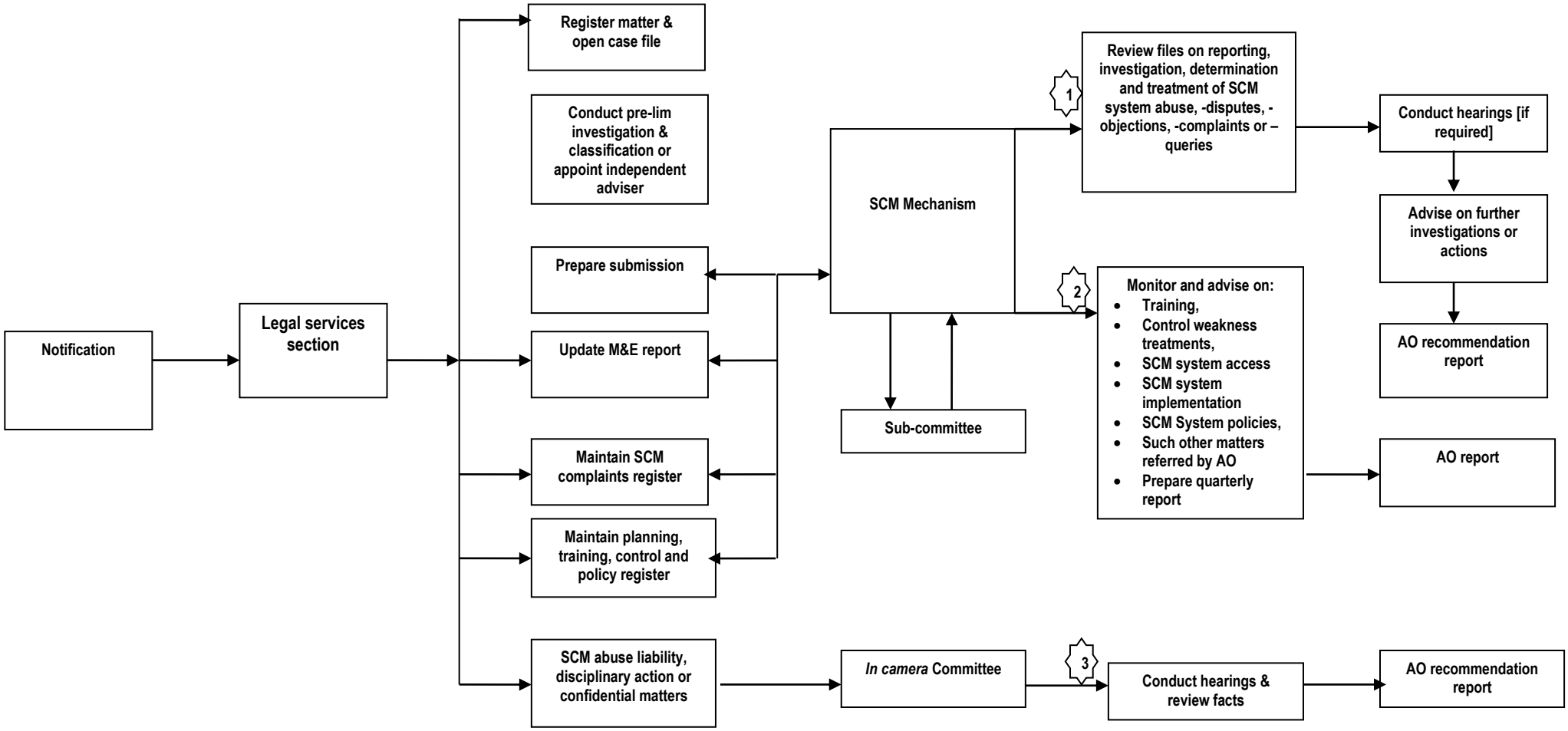
1.11.15.9 This paragraph must not be read as affecting a person's rights to approach a court at any time.

PRINCIPLES

1.11.15.10 The Legal Services Unit must develop and maintain a Complaints Mechanism Standard Operating Procedure as referred to in Part 1.11.14 above

OPERATIONAL

1.11.15.11 The SOP should contain as its main elements the following process:



1.11.16 SCM RELATED APPEALS

SCM TR 21(e), 49 & 50 and MSA 62

POLICY

1.11.16.1 Bidders are allowed to appeal against a decision or action of the Municipality, but only after exhausting the provisions of SCM TR 21(e), 49 and 50.

1.11.16.2 In strict legal terms the nature of an appeal has a specific meaning in relation to administrative actions, only allowing for a review of the processes followed by the administrator but not the merit of the discretionary decision taken by them. If the decision of the Municipality is taken on appeal, it means that the Municipality should show cause that it followed due process in awarding the tender.

1.11.16.3 The administrator will not have to defend the merits of any discretionary decisions taken subject to such decisions being reached following due process. In practical terms, it means that the Municipality will have to confirm that:

- Due process was followed in awarding the tender, i.e. all relevant legal prescripts were complied with; and
- The discretionary decision made to award the tender was reached having followed such due process.

1.11.16.4 If an application for appeal is upheld, the only sanction could be that the tender evaluation and/or adjudication process must be re-constituted following due process. An administrative appeal does not allow the making of an alternative decision, but only to refer a matter back to follow due process.

1.11.16.5 Since the AO and/or members of the Adjudication Committee are in most instances involved in the final decision making as per the MFMA, they cannot be an Appeal Authority as foreseen in section 62 of the MSA[1] and therefore appeals may also be considered through a court of law process or as per SCM TR 50(1).

1.11.16.6 Through practice SCM related appeals are dealt with through the application of

1.11.16.7 From the above as well as the interpretation allowed thereto by recent case law[2], it is evident that the MSA and MFMA in its application seems to contradict each other, which results in

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[1] MSA 62 stipulates that:

"(1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councilor or staff member of a Municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councilor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the Municipal manager within 21 days of the date of the notification of the decision.

(2) The Municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).

(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(4) When the appeal is against a decision taken by-(a) a staff member other than the Municipal manager, the Municipal manager is the appeal authority"

[2] *CC Groenewald v M5 Developments* (283/09) [2010] ZASCA 47 [31 March 2010]; *Loghdey v Advanced Parking Solutions CC* Unreported, Case No. 20766/2008 (W) [25 February 2009]; *Lohan Civil-Tebogo Joint Venture v Mangaung Plaaslike Munisipaliteit* Unreported, Case No. 508/2009 (O) [27 February 2009]

confusion, delays and costly legal representation and all efforts must be made to protect both the suppliers and Municipality against the aforementioned actions.

PRINCIPLES

1.11.16.8 In order to ensure an efficient SCM related appeals administration process, management should adopt an appeals mechanism that as its main objective establish an administrative process that:

- is clear;
- is linked to reasonable time frames;
- has clear roles and responsibilities assigned to the different role players;
- is administratively just;
- can be applied, with minimal variation, to other appeal processes managed by the Municipality;
- would improve efficiency;
- would adequately provide for separation of powers;
- would secure the Municipalities independence and objectivity; and
- would ensure adequate opportunity for the Appeal Authority to access and optimise the Municipal knowledge and expertise without compromising the other objectives.

1.11.16.9 Experience and recent case law has taught that SCM related appeals submitted to Municipalities vary in complexity, nature and volume. The complexity of SCM related appeals further dictates the work to be done to consider and decide on the matter. SCM related appeals can generally be divided into three categories, namely:

- Simple, predictable or non-technical SCM related appeals;
- SCM related appeals of medium complexity; and
- Complex SCM related appeals.

1.11.16.10 It should be noted that SCM related appeals from numerous parties can be received on a single decision and can vary in complexity. If this is the case, the process prescribed for the most complex of the SCM related appeals received will be followed. It should further be noted that in a single SCM related appeal, or if received from one party, could contain mostly issues falling in one category (see criteria below) but one or more issues may be raised that fall within a more complex category. Again, the more rigorous process prescribed for the more complex SCM related appeal will be followed.

1.11.16.11 The potential categories of SCM related appeals are unpacked below:

Category 1: Simple, predictable or non-technical SCM related appeals

1.11.16.12 SCM related appeals that fall in this category do not justify the constitution of a formal appeal panel or extensive external review and can be dealt with administratively. These are typically related to general SCM matters falling outside the ambit of a specific tender. Criteria to be used to place a SCM related appeal in this category include:

(a) The grounds of SCM related appeal relate to matters where precedent has been set before on the applicability of the issue in the tender process. This precedent may be due to the fact that the matter is adequately covered by means of other processes or a court ruling designated it as

falling outside of the ambit of the tender. The PPPFA Regulations case in Limpopo, 20093, would be an example of such a precedent.

(b) No substantial reasons / grounds were provided.

(c) The SCM related appeal is based on procedural rather than technical grounds.

(d) The grounds of the SCM related appeal have been raised and adequately addressed during the Tender process.

(e) The SCM related appeal is based on practical issues such as execution of conditions.

(f) The SCM related appeal is based on clear errors contained in the decision.

(g) The Municipal Manager was not involved in the SCM process.

(h) The value of the relevant Bid is less than R 200 000.

Category 2: SCM related appeal of medium complexity

1.11.16.13 SCM related appeals falling in this category are more technical in nature but the necessary expertise to respond to the issues raised is mainly available within the Municipality or obtainable from not more than 2 outside sources. It could also contain legal arguments that is general in nature and can be responded to by obtaining legal input. Criteria to be used to place an SCM related appeal in this category include:

(a) The grounds of the SCM related appeal relate to matters where no precedent has been set before on the applicability of the issue in the tender process.

(b) The SCM related appeal was submitted on grounds of appeal and these grounds are technical of nature but not overly complex.

(c) The SCM related appeal is based on legal arguments related to general administrative law or general legal principles.

(d) The grounds of the SCM related appeal relate to general administrative, financial and/or technical management issues (and the relevant expertise exists within the Municipality to respond to the arguments raised).

(e) The Municipal Manager was not involved in the SCM process.

(f) The value of the Bid is below R 200 000.

Category 3: Complex SCM related appeals

1.11.16.14 SCM related appeals falling in this category contain technical or legal arguments that are specialised, highly complex and/or controversial. The technical or legal expertise required to respond to the issues are not available within the Municipality or alternatively, due to controversy surrounding the matter, the Municipality may want an external opinion. Criteria to be used to place the SCM related appeal in this category include:

(a) The tender process was high profile and local, national and/or international organisations were involved.

(b) The grounds of the SCM related appeal contain specialised technical arguments that require expert responses. (e.g. specialised water purification. etc.)

[3] **Sizabonke Civils CC vs Zululand District Municipality, KZN, 2009**

(c) The grounds of the SCM related appeal contain technical and complex legal arguments that require expert responses (e.g. specialised administrative law, international law, constitutional law, etc.)

(d) The grounds of the SCM related appeal include political arguments or relates to government policy.

(e) The outcome of the SCM related appeal, if upheld, will result in an irregular expenditure as envisaged in the MFMA[4] and will require a MFMA section 32 Committee intervention.

(f) Municipal Manager was involved in the SCM process.

OPERATIONAL

1.11.16.15 In order to ensure that the objectives set above are met, the administration (including all correspondence, etc) of SCM related appeals must take place outside the office of the decision making delegated authority and within the SCMU in the office of the CFO. It is important to keep in mind that the SCM related appeals administration process does not only start once an appeal has been received but actually starts on the day that the bid is advertised by the Municipality. This is important as the very first thing that needs to be established on receipt of a SCM related appeals is whether it is competent in law, that is, whether it was submitted within the prescribed timeframe and whether it complies with the legal requirements set for a SCM related appeal in the applicable legislation.

1.11.16.16 It logically then flows from the above that the SCMU must be able to on receipt of a SCM related appeal establish whether it was submitted within the prescribed timeframe and secondly, whether it meets the requirements set in law.

1.11.16.17 The SCMU must develop and maintain a Municipal SCM Appeal SOP or protocol.

1.11.17 COMPLIANCE

Refer to SCM TR 9

POLICY

1.11.17.1 The SCMPPOS must describe in sufficient detail -:

1.11.17.2 The Supply Chain Management System that is to be implemented by the Municipality.

1.11.17.3 Effective systems for:

- Demand management
- Acquisition management
- Logistics management
- Disposal management
- Risk management
- Performance Management

[4]**MFMA section 1 – definition of irregular expenditure**

1.11.18 ACCESS TO INFORMATION

Refer to section 32 of PAIA and SCM TR 11(3)

POLICY

1.11.18.1 Everyone has the right of access to -:

- Any information held by the state;
- Any information that is held by another person and that is required for the exercise of any rights.

1.11.18.2 The objectives of this are to-:

- Give effect to the constitutional right of access to any information as stated above;
- Set out justifiable limitations on the right of access to information aimed at protecting people's privacy, confidential commercial information and ensuring effective, efficient and good governance;
- Balance the right of access to information with all the other rights in the constitution;
- Promote a culture of human rights and social justice;
- Establish mechanisms and procedures to enable persons to obtain access to records as swiftly, inexpensively and effortlessly as is reasonably possible;
- Promote transparency, accountability and effective governance;

1.11.18.3 Empower and educate everyone to:

- Understand their rights in terms of the Act;
- Understand the functions and operation of public bodies; and
- Effectively scrutinise and participate in decision-making by public bodies that affect their rights.

1.11.18.4 Therefore, it permits aggrieved bidders to challenge procurement decisions by allowing them access to information they might require whether their right have been infringed.

PART 1.12: COMMITTEE SYSTEM

1.12.1 COMMITTEE SYSTEM

MFMA s 117 and SCM TR 26-29

POLICY

1.12.1.1 A committee system for competitive bids is hereby established, consisting of the following committees for each Procurement or cluster of procurements with a value exceeding R200 000:

- A bid specification committee;
- A bid evaluation committee; and
- A bid adjudication committee;

1.12.1.2 The committee system may be utilized for the procurement of complex goods, services and works greater than R30 000 should it be deemed necessary by the SCM Manager

1.12.1.3 The AO or delegated authority appoints the members of each committee, taking into account section 117 of the Act.

1.12.1.4 A neutral or independent observer must attend or oversee a committee when this is appropriate for

ensuring fairness and promoting transparency.

1.12.1.5 The committee system must be consistent with –

(a) Parts 12.2, 12.3 and 12.4 of this SCMPPOS; and

(b) Any other applicable legislation.

1.12.1.6 The AO or delegated authority may opt to apply the committee system to formal written price quotations

PRINCIPLES

1.12.1.7 **APPOINTMENT OF MEMBERS**

- The AO or delegated authority must appoint the members, their *secundis,* and from the members appointed also appoint the Chairperson and the Deputy Chairperson

1.12.1.8 **TENURE**

- The AO or delegated authority must appoint a member on an *ad hoc* basis or part time basis, where appropriate, for a term determined by the AO or delegated authority, up to a maximum period of three years.
- A member may be eligible for the extension of the tenure for a period not exceeding two years, subject to such extension being granted by the AO or delegated authority prior to the expiry of the tenure without interruption in tenure.
- Notwithstanding the above, the consecutive tenure of a member must not exceed five years.

1.12.1.9 **CO-OPTING OF MEMBERS**

- The AO or delegated authority may, after consultation with the Chairperson of the Committee, co-opt any person who is able to assist the Committee or a sub-committee of the Committee in the consideration of a particular matter and more specifically to investigate and report on any matter envisaged in SCM TR 50.
- A person co-opted shall not be entitled to vote at any meeting of the Committee or a sub-committee of the Committee.
- The remuneration of any person co-opted in terms of this section shall be determined by the AO or delegated authority.

OPERATIONAL

1.12.1.10 **Committee membership:**

- A Committee consists of such number of members as determined per relevant Committee.

1.12.1.11 **Committee members must:**

- Be appropriately mandated to perform its functions.
- Be experienced and kept up to date in the application of the Municipal SCMPPOS.
- Have appropriate 'confidential clearance'.
- Have appropriate access to relevant and other transversal and municipal systems.
- Have appropriate access to all relevant personnel within the Municipality for interviews

1.12.1.12 **In order to be eligible for appointment as a member of the Committee a person shall –**

- Be a natural person.
- Have the appropriate skills and expertise.
- Be a fit and proper person to hold office as a member of the Committee.
- Be able to communicate in at least two of the three official languages of the Western Cape.

1.12.1.13 **Generic committee functions and powers:**

- **The Chairperson:**

(i) Retains all his/her rights as a member.

(ii) May adjourn a meeting.

(iii) May rule on points of order, which will be final.

(iv) May withdraw any proposal or other matters under discussion provided there is a majority of members in agreement with the decision.

(v) Convene extraordinary committee meetings on request.

- **The Chairperson shall:**

(i) Maintain order during a meeting and ensure that business is conducted in an orderly manner.

(ii) Before opening a meeting, ensure that it is properly constituted.

(iii) Confirm declarations and confidentiality arrangements and signing of the attendance register.

(iv) Protect the rights of every member.

(v) Vacate his/her seat to the vice-chairperson, should he/she wish to partake in a discussion in a partial manner.

(vi) Regulate participation in discussions.

(vii) Deal with items in sequence of the agenda.

(viii) Ensure that members know exactly what they are required to vote on.

(ix) Ensure that only one member holds the floor at any one time.

(x) Provide guidance by directing the meeting, but shall not dominate.

(xi) Conduct meetings in a formal manner.

(xii) Formulate clearly the decisions to be minuted and sign and approve the minutes after they have been verified for correctness.

- **The Members shall:**

(i) Be fully conversant with the powers and limitations of the Committee as well as all legislation, directives and the Municipal delegations pertaining to SCM and shall act in accordance with the legislation, directives and delegations.

(ii) Apply their minds to matters at hand in order to take meaningful and accountable decisions and in the event of doubt or uncertainty, to propose that matters be referred back for clarification.

(iii) In advance, furnish a written apology should he/she not be able to attend a meeting.

(iv) Strive to be punctual for meetings and to stay for the duration of a meeting. *NOTE*: Where a member leaves the meeting before it has completed its business in relation to a specific bid, and as a result there is no longer a quorum, a recommendation cannot be made as if that member was present, nor can the member cast a vote *in absentia*.

(v) Prepare properly for each meeting by studying the agenda, submissions, reports and recommendations.

(vi) Be familiar with meeting procedures in order to make a contribution in the correct manner.

(vii) Refrain from repetition and duplication of contributions by other members.

- **Members must accept that:**

(i) The chairperson has the right to interrupt and ask a member to stop speaking if the address is repetitive or irrelevant to the matter under discussion;

(ii) A member must stop speaking if ruled out of order by the chairperson;

(iii) Decisions are taken by general consensus or by a show of hands when a matter is decided upon by voting;

(iv) Once a decision has been taken it is final and not open for discussion unless additional information which was not available at the time of decision-making can be produced;

(v) Information and documentation are confidential;

(vi) A member (including the chairperson) shall beforehand declare his/her interest regarding any matter serving before the Committee and the member will then recuse her/himself during the discussion of that matter. No discussion by the member concerned will be allowed prior to the serving of that submission/report and such a member may not retain that specific submission/report. Any personal interest that may infringe, or might reasonably be deemed to infringe on a member's impartiality in any matter relevant to their duties must be recorded;

(vii) Outvoted members must abide by the majority decision of the Committee; and

(viii) No communication should be made with a bidder/contractor by any member during the evaluation and prior to the award phase of a bid, unless it falls within the ambit of seeking clarity, is done on the request of the relevant committee and does not compromise the other bids on the table.

- **Members have the right to:**

(i) Have advance knowledge of the agenda.

(ii) Submit proposals and participate in proceedings.

(iii) Vote and have a dissenting voice and have the reasons therefore recorded.

- **Co-opted members/advisors:**

(i) Have the same powers and duties as members, excluding the right to vote on any matter under discussion.

(ii) Members of the Bid Evaluation Committee may present their reports/recommendations to the Bid Adjudication Committee and clarify any issues but shall not have any voting powers.

- **Observers:**

(i) On request, the chairperson may allow officials to attend a meeting as observers. Observers have no participation in the proceedings, except to advise the representative (member) or the committee if permitted by the chairperson. Observers should be cautioned to maintain the confidentiality of the discussions and should sign the declaration of confidentiality and

impartiality as an observer.

(ii) As per MFMA section 117, no councilor may attend any bid committee meeting as an observer.

➢ **Meeting Procedures:**

(i) The Committee must meet as directed at a time when required to conduct its business and achieve its objectives and at a time and venue determined by the Chairperson of the Committee.

(ii) The Chairperson or Deputy Chairperson must preside at a meeting of the Committee, but if both the Chairperson and the Deputy Chairperson are not available, the members present must elect another member to act as Chairperson.

(iii) Fifty percent (50%) +1 constitute a quorum, of whom at least one must be representing the specific directorate.

(iv) Any matter considered by the Committee or sub-committee must be decided with a supporting vote of at least the majority of the members present.

(v) A person may only attend or be present at a meeting of the Committee-

- With the permission of the Committee and/or the AO.
- If such person is a designated official of the Municipality or Provincial Treasury.
- When authorised to attend by legislation or an order of court.
- When instructed to attend by the Chairperson to assist it in its business.

(vi) The Committee must determine rules for the conduct of its business and procedures for its meetings

(vii) Minutes of meetings and hearings held by the Committee and any sub-committee must be recorded and kept in the relevant support office who is responsible for the secretariat service of such Committee in such a manner as prescribed.

➢ **Meetings:**

(i) Items for the agenda together with the written submissions must be lodged with the relevant Secretariat within three days in the case of Bid Specification/Evaluation Committee meetings and within seven days in the case of Bid Adjudication Committee meetings before the scheduled date of the meeting. Late submissions shall be carried over to the next meeting or be made additional to the agenda as per the Committees' discretion.

(ii) Exceptional meetings will be held as and when considered necessary due to exceptional circumstances, as determined by the chairperson. Any member of the Committee may request the chairperson for convening exceptional meetings. The Committee member requesting the exceptional meeting must furnish the reason/purpose of such a meeting in writing.

(iii) Every member attending the meeting owes deference to the chairperson and may be removed if that person does not respect the authority of the chair.

➢ **Notice of meetings:**

(i) Notice to ordinary meetings is to reach members 2 (two) days before the scheduled date of the meeting.

(ii) Notice should include agenda, minutes and submissions.

(iii) The agenda of a meeting serves as the program of the meeting and unless the Committee decides otherwise, the items and sequence may not be changed during the meeting.

(iv) Notice to exceptional meetings is to reach members at least three hours before the meeting. Telephonic or other electronic messages conveying date, time and purpose of the meeting are acceptable. This meeting shall generally be convened for urgent matters that cannot be held over until the next ordinary meeting. The agenda must be supplied before or at the start of the meeting. Minutes of the previous meeting will not be handled at such a meeting unless they form part of the purpose of the meeting. Generally this meeting will attend to urgent queries arising from previous decisions of the committee which may have legal or financial implications or any other matter that the committee sees it fit to attend, which if not attended to might have a detrimental effect to the Municipality, be it financially or legally.

- **Non-attendance:**

(i) Non-attendance of meetings will be noted "with" or "without" apology. Repeated failure to attend meetings without valid reasons shall result in the matter being reported to the AO for action.

- **Minutes and record keeping:**

(i) The SCMU shall be responsible for the secretariat work, including minute taking for the relevant Committees.

(ii) Decisions of Committee meetings must be recorded.

(iii) The SCMU shall further be responsible for safe keeping of all correspondence generated by or received on behalf of the Committee.

(iv) The secretary to the Committee shall be responsible for the safe keeping of the records, as well as copies of minutes signed by the relevant chairperson as accuracy and validity of proceedings.

- **Decision making:**

(i) Where the Bid Adjudication Committee disagrees with the recommendation of the relevant Bid Evaluation Committee on the adjudication of a bid, the request should be referred back to the Bid Evaluation Committee, if the Bid Evaluation Committee does not agree with the recommendations of the Bid Adjudication Committee, the bid documents is to be submitted to the AO or delegated authority for a final decision.

(ii) The AO may obtain advice as deemed necessary, including advice from outside the Municipality.

(iii) If the AO decides to approve a bid other than the one recommended by the relevant Bid Committee, the Auditor-General and the National and Provincial Treasury must be notified in writing within 10 days of the reasons for deviating from such recommendation.

(iv) The AO may at any stage refer any recommendation made by the Bid Evaluation Committee or the Bid Adjudication Committee back to that committee for reconsideration.

- **Point of order:**

(i) A member may speak on a point of order only if he/she is of the opinion that there has been a departure from the rules of order, e.g. an objection against improper language used, that a speaker has transgressed, etc.

- **Confidentiality:**

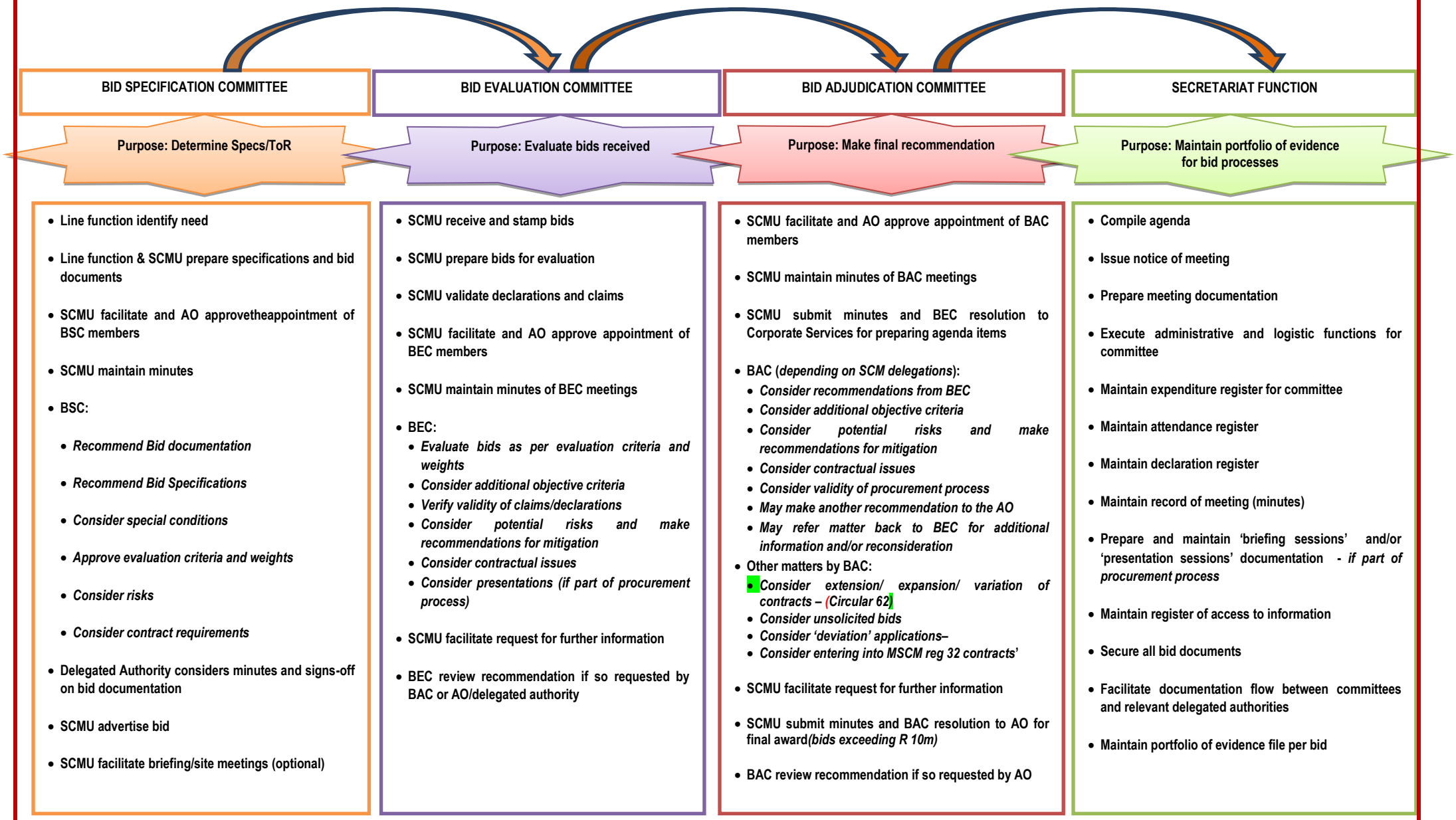
(i) All bids plus any related correspondence and deliberations thereon must be treated as confidential information. No member of the Bid Committees' or any other official of the Municipality may divulge information relating to bids unless authorised to do so. Any person liable for such conduct may be charged with misconduct.

(ii) Matters of a confidential nature in the possession of supply chain or other officials should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions should also apply after leaving the service of the Municipality.

(iii) Any information that is the property of the Municipality or its suppliers/service providers should be protected at all times.

1.12.1.14 The SCMU in the Office of the CFO must develop and maintain a Bid Committee SOP that graphically represents the following:

Figure 1.12.1: SCM Bid Committee System



1.12.2 BID SPECIFICATION COMMITTEE

1.12.2.1 ROLES AND RESPONSIBILITIES OF MEMBERS

Refer to sections 77 & 78 of the MFMA and SCM TR 27

POLICY

- To compile specifications for bids at the Municipality in an unbiased manner to allow all potential bidders to offer their goods, and services.
- To identify and include the relevant evaluation criteria in the specifications as bids may only be evaluated according to the criteria stipulated in the bid documentation.
- To forward the final specification to the SCMU to facilitate final approval of the specification prior to the advertisement of bids.
- To consider and mitigate risks emanating from bids.
- To consider the contractual arrangements relevant to each bid.
- A member of the specification committee can also be a member of either the BEC or BAC (but not both committees) that considers any of the bids for the same goods or services.

1.12.2.2 ESTABLISHMENT OF BID SPECIFICATIONS COMMITTEES

POLICY

- The AO shall establish the Bid Specification Committee by identifying and appointing members for a specific period for the approval of specifications between R30 000 and R10 Million.
- The AO must appoint the chairperson of the committee.
- The Bid Specification Committee process must provide for final approval by:
  (i) The Committee for awards up to R 10 m.
  (ii) The AO for awards exceeding a value of R 10 m.
- The AO or delegated authority may utilise the services of any other institution's Committee if and when required.
- No person, advisor or corporate entity involved with the BSC, or director of such a corporate entity, may bid for any resulting contracts.

OPERATIONAL

- The SCMU shall be responsible to facilitate the establishment of the Bid Specification Committees in conjunction with the AO.
- Once a requirement is identified that should be satisfied, the SCMU shall facilitate the establishment of a Bid Specification Committee through the relevant management structures.
- The member(s) of the Committee must be informed in writing of their appointment to the Committee and it should be stipulated for which requirement the Committee is constituted.
- The SCMU shall provide the secretariat service to the Committee, unless differently directed.

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1.12.2.3 COMPOSITION OF BID SPECIFICATION COMMITTEES

POLICY

- The AO must establish the Bid Specification Committee which will be composed of at least the following members:

  Chairperson

  Vice Chairperson

  3 x members of which one is the official responsible for the project as well as at least one SCM official

  Secretary (official from the SCMU with no voting rights)

  .
- The quorum for each meeting of the specification committee is 50% plus 1. Either the chairperson or deputy chairperson needs to be present to chair the meeting as well as the responsible official of the department concerned. Two standing members, one member from the SCM Unit and one member of the directorate as minimum.
- A professional with required technical expertise from the department for whom the goods or services are to be procured, may also be appointed as may be required for each committee meeting.
- An external consultant may be appointed if deemed necessary, provided that the task is executed under the direction of the line function Senior Manager concerned.

OPERATIONAL

- The relevant end user division or department will be responsible for
  - (i) the compilation of the specifications and terms of reference
  - (ii) the compilation of criteria for the evaluation of bids
  - (iii) the provisional approval of the bid documents and advertisements once compiled by the SCMU
  - (iv) to always ensure that the relevant technical expertise is represented on the Bid Specifications Committee
  - (v) the completion and signing of all checklists and other documents before the meeting is arranged

The SCMU will be responsible for:

- (i) the compilation of bid documents and advertisements
- (ii) Secretariat services to the committee

- The Bid Specification Committee will be responsible for:
  - (i) Ensuring that the bid document, specifications/terms of reference and advertisement/s are legislatively compliant
  - (ii) That the project is budgeted for and sufficiently funded
  - (iii) That the tender is aligned with the organisation vision, mission and strategic objectives
  - (iv) That they set the benchmark for the obtainment of value for money

1.12.3 BID EVALUATION COMMITTEE

1.12.3.1 ROLES AND RESPONSIBILITIES OF MEMBERS

Refer to sections 77 & 78 of the MFMA and SCM TR 28

POLICY

- To evaluate all bids received from above the quotation threshold.
- May evaluate offers received within the quotation threshold where the requirement is technically complex and/or there are risks involved that warrant this process.
- To ensure that evaluation is done in accordance with the criteria specified in the bid documentation.
- To submit a report and recommendations regarding the award to the Bid Adjudication Committee for consideration and/or approval.
- To present their reports to the Bid Adjudication Committee to clarify uncertainties. Such members shall not have any voting power on the Bid Adjudication Committee.
- To check in respect of each bidder whether taxation matters are cleared by SARS.
- To check in respect of the recommended bidder whether Municipal Rates and taxes and Municipal service charges are not in arrears.

1.12.3.2 **ESTABLISHMENT OF BID EVALUATION COMMITTEES**

SCM TR 29, 44 & 46

POLICY

- The AO must establish the Bid Evaluation Committees which will be composed of at least the following members:

  Chairperson

  Deputy Chairperson

  3 x members of which one is the official responsible for the project as well as at least one SCM official

  Secretary (official from the SCM unit with no voting rights), as necessary per requirement and may utilise the services of any other institution's Committee if and when required.
- The quorum for each meeting of the evaluation committee is 50% plus 1. Either the chairperson or deputy chairperson needs to be present to chair the meeting as well as the responsible official of the department concerned. Two standing members. One member from the SCM Unit and one member of the directorate as minimum.
- Should a member declare a conflict of interest at any stage, the member may not be part of the Bid Evaluation Committee and must be replaced by a member of suitable expertise.
- An official may not be a member of the Bid Evaluation Committee and the Bid Adjudication Committee for the same bid.
- No person other than a member of the Bid Evaluation Committee or the official rendering the secretariat function is allowed to attend the meeting, unless formally co-opted as provided for.

OPERATIONAL

- The SCMU will be responsible for:
  (i) Ensuring that all bids received adhere to the conditions of tender
  (ii) The compilation and submission of a report based on the bidders adherence to the conditions tender to the Bid Evaluation Committee
  (iii) The compilation of the evaluation report

(iv) Secretariat services to the committee

- The relevant end user division or department will be responsible for
  - (i) Ensuring that all bids received adhere to the specifications or Terms of reference requirements of the tender
  - (ii) the technical evaluation and where required the functionality/quality evaluation of all bids received
  - (iii) compilation of the technical evaluation report
  - (iv) to always ensure that the relevant technical expertise is represented on the Bid Evaluation Committee
- The Bid Evaluation Committee will be responsible for:
  - (i) Ensuring the compliance to legislation with regards to the evaluation of bids
  - (ii) Considering the reports submitted by the user/responsible department and the SCM unit
  - (iii) Authorise the SCMU to obtain information from bidders for clarification or other purpose
  - (iv) Ensuring that the bid document, specifications/terms of reference and advertisement/s are legislatively compliant
  - (v) Ensuring that all risks associated with the award of bid is adequately addressed
  - (vi) Ensuring that should tender be recommended for cancellation the risk and compliance aspects associated with such recommendation are adequately addressed
  - (vii) Ensuring that the project are adequately funded
  - (viii) Ensuring that value for money was considered before making a recommendation
  - (ix) Making a recommendation to the Bid Adjudication Committee
- The members of the Committee must be informed in writing of their appointment to the Committee
- As part of the bid evaluation pack, each member should declare its interest in writing pertaining to the specific bid in question.
- Should an interest be declared which constitutes a conflict or is regarded as material, the member must recuse him/herself as a member of the Committee.

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1.12.4 ADJUDICATION COMMITTEE

1.12.4.1 ROLES AND RESPONSIBILITIES

Refer to sections 77 & 78 of the MFMA and SCM TR 29

POLICY

- To consider the report and recommendations made by the Bid Evaluation Committee or the delegated official(s) who performed the evaluation.
- To assess the process followed in making the recommendation to ensure that the SCMPPOS have been complied with in full.
- To obtain clarity from members of the Bid Evaluation Committee if required.
- To make the final award in bids less than R 10 m and to comment on the recommendations made and

forward it together with the report to the AO for bids in excess of R 10m.

- To refer the recommendation back to the Bid Evaluation Committee if they do not agree with the recommendation in order to endeavor to sort out the differences if they are process related.
- Should the Bid Adjudication Committee and/or the AO not agree with the recommendations made by the Bid Evaluation Committee, only the AO may make the final award, within 10 working days, subject to the provisions of section 114 of the MFMA.
- Meetings of the BAC may be open to the public.

1.12.4.2 **ESTABLISHMENT OF BID ADJUDICATION COMMITTEE**

SCM TR 29, 44 & 46

POLICY

- The AO shall establish the Bid Adjudication Committee to perform the award/adjudication of bids.
- The AO must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- The Bid Adjudication Committee process must provide for final approval by:
  (i) The Committee for awards up to R 10 m.
  (ii) The AO for awards exceeding a value of R 10 m.
- The adjudication for a bid cannot be conducted by an official who:
  (i) Performed the evaluation or made a recommendation in respect of that bid.
  (ii) Served on the Bid Evaluation Committee, which processed that bid.
- No advisor may form part of the final decision-making process regarding the award of bids.
- The AO may utilise the services of any other institution's Bid Adjudication Committee if and when required.
- The person acting on behalf of a member in a specific component, may replace such member when the latter is not available.

OPERATIONAL

- SCMU shall be responsible to facilitate the establishment of the Bid Adjudication Committee in conjunction with the AO.
- The members of the Committee must be informed in writing of their appointment to the Committee.
- Predetermined meetings at regular intervals shall be held.
- Before the start of the each meeting, each member should declare its interest in writing pertaining to the specific bid(s) in question.
- Should an interest be declared which constitutes a conflict or is regarded as material, the member must recuse him/herself as a member of the Committee. The SCMU must then identify a replacement member (secundus) for the Committee if the Committee does not have a quorum to proceed.
- SCMU shall timely route the recommendations to the Committee for consideration.
- SCMU shall perform secretariat functions for the Committee meetings, unless determined otherwise.

1.12.4.3 **COMPOSITION OF BID ADJUDICATION COMMITTEE**

POLICY

- The Bid Adjudication Committee shall be composed of the following members:

Standing Members:

(i) Chairperson
(ii) Vice chairperson
(iii) At least one senior SCM practitioner who is an official of the Municipality;
(iv) 2 x officials in senior management positions employed by Hessequa Municipality
(v) Secretary (official from the SCMU with no voting rights);

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- The quorum for each meeting of the BAC is 3 standing members.
- When possible, the chairperson of the Bid Adjudication Committee should be the CFO or, if the CFO is not available, another manager in the budget and treasury office reporting directly to the chief financial officer.

OPERATIONAL

- The SCM Unit must, in conjunction with AO and other relevant stakeholders:

(i) Identify the appropriate members to serve on the Bid Adjudication Committee. The identified members must be senior officials.
(ii) Ensure that sufficient financial expertise as well as supply chain expertise is available to advise or support the Bid Adjudication Committee

1.12.5 INFRASTRUCTURE RELATED PROJECTS

Refer to CIDBA

POLICY

1.12.5.1 For infrastructure and construction related procurement Volume 8 – Infrastructure and Construction will apply.

1.12.5.2 The provisions of the CIDBA will be adhered to, complementary to the SCMPPOS

1.12.5.3 Where relevant the EPWP principles and objectives will also be observed.

OPERATIONAL

The SCMU and relevant Committee must:

1.12.5.4 Determine the appropriate CIDBA grading required per service during the development of the specifications or terms of reference.

1.12.5.5 Verify contractor registration and grading on the CIDB website

1.12.5.6 Utilize contractors registered with the CIDB

1.12.5.7 Ensure that the prescribed CIDB (Uniformity Standard Bid Documents) bid documents for construction related tenders are utilized.

1.12.5.8 Access bidders' documents against the prescribed CIDB contractor requirements.

1.12.5.9 Register every project approved by the Municipality, consisting of Construction Works Contract

with the CIDB.

1.12.5.10 Advertise and award construction contracts on the CIDB i-Tender system.

1.12.5.11 Update and complete contract registered on the i-Tender system.

1.12.5.12 Advertise and award construction contracts on the E-Portal publication.

1.12.5.13 Issue dates in respect of completion certificates, renewals, terminations, or cancellations, the settlement of all amounts owing to contractors in accordance with contracts and the submission of status reports to the CIDB.

1.12.5.14 Place registered contractors or any principles of that contractor under any restriction to participate in public procurement as contemplated in the CIDB regulations.

1.12.5.15 Suspend and de-register contractors as contemplated in the CIDB regulations

1.12.5.16 Complaints and grievances by actions taken in terms of the CIDB regulations

1.12.5.17 Failure to comply with the CIDB regulations

1.12.5.18 Arrange construction contracts by consultants to adhere to all the above mentioned, requirements and CIDB regulations

1.12.5.19 Align consultant remuneration to the CIDB's guidance

1.12.5.20 Disqualify consultants providing consulting services for construction related contracts and any of their affiliates from subsequently providing goods, works or services related to the project.

1.12.5.21 Align sub-contracting arrangements and joined venture initiatives to CIDB guidelines and requirements

1.12.6 RESOLUTION OF COMMITTEE DISAGREEMENTS

Refer to MFMA section 114 and SCM TR 36

POLICY

1.12.6.1 Where the Bid Adjudication Committee disagrees with the recommendation of the relevant Bid Evaluation Committee on the adjudication of a bid, it must refer the request together with its recommendations to the Bid Evaluation Committee for consideration.

1.12.6.2 Where the Bid Adjudication Committee still disagrees with the recommendation of the relevant Bid Evaluation Committee the commentary and reasons of the Bid Adjudication Committee is to be submitted to the AO for a final decision.

1.12.6.3 The AO may obtain advice as deemed necessary, including advice from outside the Municipality.

1.12.6.4 Should the AO decide to award a bid to a bidder other than the one recommended by the relevant Bid Committees, the Auditor-General, the National Treasury and the Provincial Treasury must be informed in writing within ten days of the reasons for such decision.

OPERATIONAL

1.12.6.5 The SCMU must maintain a register of such incidences as well as records of prescribed reporting and related communiqué.

VOLUME2: DEMAND MANAGEMENT

PART 2.1: NEEDS ANALYSIS

2.1.1 SYSTEM OF DEMAND MANAGEMENT

Refer to SCM TR9(b)

POLICY

2.1.1.1 The AO must establish and implement an appropriate system of demand management in order to ensure that the resources required to support its operational commitments and strategic goals outlined in the IDP are available.

PRINCIPLES

Line function must:

2.1.1.2 Include timely planning and management processes to ensure that all goods and services required by the Municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost.

2.1.1.3 Take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature.

2.1.1.4 Provide for the compilation of the required specifications to ensure that its needs are met.

2.1.1.5 Undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

2.1.2 SDBIP

Refer to SCM TR 42 and Chapter 6 of the Municipal Systems Act, 2000

POLICY

2.1.2.1 The SDBIP shall be produced per the MTEF cycle with a review every year during the planning and budgetary period.

2.1.2.2 The SDBIP is to set out the Council's strategic policy priorities and plans for the next three years. This document serves as a blueprint for what the Municipality plans to do for the remaining three-year period.

2.1.2.3 Should the Municipality produce this three-year plan for the current cycle, the SCMU must be involved to add value from a SCM perspective.

PRINCIPLES

2.1.2.4 The aim of producing a SDBIP is to detail the Municipality's strategic priorities.

2.1.2.5 The focus must therefore be on those issues that are strategically important. The resultant document must be clear, concise and coherent, focusing attention on the strategic issues the Municipality intends addressing or doing in the next three-year period.

2.1.2.6 Identifying strategic priorities of necessity entail making difficult choices between different areas of possible focus and action. The SCMU involvement at this stage can be very useful in helping the end-users in identifying and determining strategic priorities.

2.1.3 ANNUAL PERFORMANCE PLANNING PROCESS

POLICY

2.1.3.1 The SCM unit shall participate in the annual performance planning process.

2.1.3.2 Each user division shall perform an annual needs analysis of strategic objectives and programmes involving SCM, Human Resource Management and Finance to determine strategic sourcing that will ultimately provide best value for money.

PRINCIPLES

2.1.3.3 The annual performance plan is to set out what the Municipality intends doing in the upcoming financial year.

2.1.3.4 The purpose of the plan is to spell out what funds and resources the Municipality has allocated in order to deliver on the measurable objectives and service delivery targets set out in the SDBIP. In addition, the Municipality will be required to indicate their expected capital requirements, which may extend beyond one financial year.

2.1.3.5 Annual performance planning and prioritization is the starting point for preparation of the annual budget submissions as it guides reprioritization within the medium term baseline allocations and provides the rationale for policy options regarding changes to baseline allocations over the next 3-year period.

2.1.3.6 The integration of SCM planning with the annual performance planning, budgeting and monitoring of service delivery performance, coupled with effective financial information and advice, will enhance the link between the services that the Municipality provide and the benefits and cost of such services.

2.1.3.7 The annual performance plan must:

- Provide for one financial year and indicative of the outer years to be consistent with the Municipality's medium term expenditure estimates and its adopted Integrated Development Plan (IDP).
- Provide for strategic objectives.
- Include the measurable objectives and outcomes for the Municipality's programmes.
- Provide for performance measures and targets, ensuring the specific outputs are identified.
- Include details of proposed acquisitions of fixed or movable capital assets, planned capital investments and rehabilitation and maintenance (according to the Municipal asset management plan) of physical assets.
- Include multi-year projections of income and projected receipts from the sale of assets.

OPERATIONAL

2.1.3.8 The preparation of estimates should be a participative process whereby all end users and SCM practitioners are involved.

2.1.4 ASSESSMENT OF CURRENT AND FUTURE NEEDS

Refer to SCM TR 10 & 39, the Annual Preparation Guide for AFS issued by the NT and NT MFMA circular 62 of 2012

POLICY

2.1.4.1 The annual performance plan must be analysed in terms of goods, services and works required over the short and medium term.

2.1.4.2 The frequency of the needs and the critical delivery dates must be established to support the SCM process and the budgetary process.

OPERATIONAL

2.1.4.3 Line function must coordinate the needs analysis and costing per identified programme within its relevant Vote in the Municipality. To do this the following process must be followed:

- The end user gives an overview of the detail of his/her annual performance plan aligned to the SDBIP and budget. The human resource management and financial experts give their guidelines applicable to this plan.
- The management team of the Municipality performs a needs analysis to determine the total needs required to support the annual performance plan. The activities within the team may be divided and the whole team need not perform all activities together. The needs analysis may include the under mentioned activities:
  - Understanding the future needs in terms of quantity and specification. Forecasting techniques may be utilized in order to determine quantities required should this be warranted by the size and the quantity of the requirement of the Municipality.
  - Frequency of the needs.
  - Critical delivery dates.
  - Budgetary requirements.
  - Planning for Information Technology requirements.
  - Linking the requirements with the baseline allocations over the next 3-year period.
  - Inventory levels.

2.1.5 ASSESSMENT OF AVAILABLE ASSETS

POLICY

2.1.5.1 Determine details of available stock, goods in transit, redundant and obsolete assets and assets to be renewed.

OPERATIONAL

2.1.5.2 The question of "how much" is required, should be answered, based upon balancing storage cost and ordering cost.

2.1.5.3 If this principle is applied to computer hardware, the above principle should be linked to other principles such as technology becoming outdated quickly.

2.1.5.4 Other planning principles to consider are as per the Municipal asset management policy and may

include:

- Obsolescence planning: Obsolescence cost is the difference between the original cost of the item and its salvage value. This only needs to be applied if you determine that you have items that will become obsolete.
- Renewal planning: The asset renewal planning involves the assessment of existing assets and planned acquisitions against service delivery requirements. This may for example be the replacement of old technology computers with up to date computers.
- Determining an asset strategy: Asset management decisions should be consistent with the asset management plan and integrated into the annual performance planning process. Following an evaluation of lifecycle costs and the benefits and risks associated with each option, the strategy will identify the most appropriate approach for meeting programme delivery needs.

2.1.6 ANALYSIS OF PAST EXPENDITURE

POLICY

2.1.6.1 Analyse who were providers of goods and services and their locations.

2.1.6.2 Determine the prices paid.

2.1.6.3 Confirm the availability of relevant specifications/terms of reference.

OPERATIONAL

2.1.6.4 A spend analysis will provide input into sourcing strategies such as consolidated buying and to gain an understanding of historical spend patterns of different items/commodities and services.

2.1.6.5 Past expenditure on the relevant goods and services is to be carefully analyzed and the following aspects carefully considered:

- What goods or services have been procured in the past and what were the specification/terms of reference linked to them?
- Was the procurement of these goods or services in line with the Municipality's business plan?
- If the goods or services were available on contract, were they procured from contracted suppliers?

2.1.6.6 Expert assistance may be sought when compiling specifications or terms of reference. The following aspects are to be taken into consideration:

- Specifications/terms of reference are to be based on relevant characteristics and/or performance requirements.
- Specifications are to permit the acceptance of offers of goods which have similar characteristics and which will be capable of providing equivalent performance.
- The quality of required commodities should not be over-specified to the extent that fair competition is not possible.
- The level of effort put into this activity will be dependent on the importance of the requirement and the quantity required in the foreseeable future.

2.1.7 ANNUAL OPERATIONAL PLAN

POLICY

2.1.7.1 The SCMU must participate in the operational planning process.

2.1.7.2 The first year of the strategic plan is known as the operational plan. It must provide a sufficiently detailed quantification of outputs and resources, together with service delivery indicators. The operational plan must not be a wish list, but shall be flexible and adjustable while remaining within the MTEF allocation.

OPERATIONAL

2.1.7.3 The purpose of the operational plan is to plan the implementation of the annual performance plan, the budget and other management objectives such as the SDBIP. It is likely that operational plans will be developed for each Vote within the Municipality.

2.1.7.4 When the budget for the next financial year is approved, the management team develops an operational plan for that year. This ensures a direct link between key organisational objectives and what managers and staff are expected to do to meet these objectives.

2.1.7.5 Specific information on how the Municipality will achieve its objectives during the next financial year should be included in the operational plan, complete with service delivery indicators. The minimum requirements for information are outlined below:

- *Descriptions of the various projects that the Municipality will pursue to achieve its objectives, and for each project, the measurable objectives, total cost and intended lifespan.*
- *Information on any new projects to be implemented, including the justification for such projects, expected costs, staffing and new capital, as well as future implications.*
- *Information on any projects and outputs to be scaled down or discontinued during the financial year.*

2.1.8 AD HOC NEEDS ANALYSIS

POLICY

2.1.8.1 Over and above the planned needs analysis, an ad hoc needs analysis has to be done for unplanned activities during the financial year.

2.1.8.2 The relevant line function will perform a need analysis on a case-by-case basis as and when required in order to determine a sourcing strategy for the appropriate product or service that will ultimately provide best value for money.

OPERATIONAL

2.1.8.3 The end user must establish the need and perform a needs analysis in conjunction with the budget office and SCMU.

2.1.8.4 Technical expertise may be co-opted.

PART 2.2: FUNDING

2.2.1 FUNDING PLAN FOR PROCUREMENT

POLICY

2.2.1.1 The line function will submit project plans aligned with the APP and SDBIP in a prescribed format.

2.2.1.2 The SCMU shall use the above to compile a SCM operational and funding plan for the next financial year.

OPERATIONAL

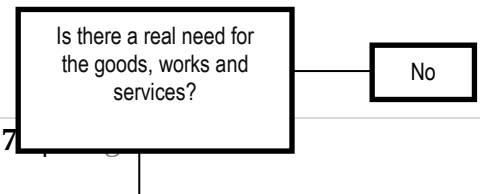
2.2.1.3 The minimum requirements of information for the operational and funding plan for procurement are outlined below:

- Detailed description of the project.
- Detailed description of the goods, works or services required.
- Reference to the relevant specification / terms of reference.
- Funds available.
- Date when required.
- Quantity required.
- Reference to the following information:
    - Frequency of requirements.
    - The lead and delivery times.

2.2.1.4 Acquisition management uses the funding plan for verification of procurement processes.

2.2.1.5 This process can graphically be depicted in figure 2.2.1:

Figure 2.2.1: Demand Management Planning and Funding process



PART 2.3: SPECIFICATIONS / TERMS OF REFERENCE

2.3.1 SCOPING THROUGH A REQUEST FOR INFORMATION (RFI)

POLICY

2.3.1.1 If sufficient information is not readily available with which to draft terms of reference/specifications, a request for information (RFI) process may be followed in order to obtain more market information.

2.3.1.2 The information collected in this fashion may not lead to sourcing from one supplier only nor may it be used to write the ultimate specification/terms of reference around just one specific product.

2.3.1.3 It must be clearly stated in the RFI that the result of this process will not lead to an award and does not constitute a commitment.

2.3.1.4 When scoping for information it must be clearly stipulated how the suppliers whose information is substantially utilised will be treated, e.g.:

- The supplier will be compensated for the cost of the proposal development; or
- The supplier will be the project manager to manage the project once commissioned; or
- The supplier will have the right of first refusal.

OPERATIONAL

2.3.1.5 A request for information may be published in the media in which information may be sourced to determine the following:

- What products are available in the market?
- What specifications do the products have?
- What is the availability of the product in the market place?
- What are possible rates of delivery?

2.3.2 COMPILATION OF THE SPECIFICATIONS OR TERMS OF REFERENCE

POLICY

2.3.2.1 The end user must draw up clear specifications and/or terms of reference.

2.3.2.2 Include clear evaluation criteria prior to the invitation of the quotation/bid as offers may only be evaluated according to the criteria stipulated in the quotation/bid document.

PRINCIPLES

2.3.2.3 It is the responsibility of the end user through the facilitation of the SCMU and the Bid Specification Committee to compile detailed, clear and unambiguous specifications with which to source proposals.

2.3.2.4 **Specifications:**

i. Must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

ii. Must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;

iii. Where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;

iv. May not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;

v. May not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words “equivalent”;

vi. Must indicate the points system to be used in terms of the Preferential Procurement Regulations 2011; and

vii. Must be approved by the Accounting Officer or relevant delegated authority prior to publication of the invitation for bids.

2.3.2.5 **Minimum specifications must include the following, where applicable:**

(i) Description of the requirement

(ii) Background.

(iii) Objective of the project, where applicable.

(iv) Quantity/volume applicable.

(v) Plans and drawings that reflect the text of the specification. *(Please note, that the order of precedence between the drawings and the specifications should be specified.)*

(vi) Minimum performance requirements.

(vii) Expected outcomes/deliverables.

(viii) Evaluation criteria including the ratio of points as applicable and the quantification thereof.

(ix) The particulars pertaining to the goal to be met, where applicable.

(x) The delivery date(s), place(s) of delivery and/or the contract period applicable. In the case of period contracts a period of time for completion of the contract must always be prescribed in the relevant bid documents. This period of time must also be precisely stated, e.g. "contract period: 24 months". Statements such as "within x months" or "before x months" must not be used.

(xi) Schedule for service delivery or completion date.

(xii) Shelf life, where applicable.

(xiii) Packaging, where applicable.

(xiv) Whether installation/erection is required and if affirmative, an indication of the place/address where the installation/erection is to take place.

(xv) Whether demonstration/training is required and if affirmative, an indication of the place/address where the demonstration/training is to take place.

(xvi) Whether a performance guarantee is required. Full particulars, amount and reasons must be given. Performance guarantees should be commensurate with the degree of contractual risk to which the Municipality is exposed and are normally applicable to large and complex contracts. Performance guarantees should spread the cost of the risk of failure between the contracting parties and should be set at such a level that all Municipal costs relating to such failure are likely to be recovered.

(xvii) The warrantee requirement and period applicable (time period, parts and labor, onsite service and repair, extended warranty)

(xviii) Whether samples must be submitted and whether the samples must be tested before the award of the contract. Reasons for testing should be given.

(xix) Where samples are to be submitted, the special conditions should state that samples must be submitted not later than the closing time or the date and time specified in the bidding documents.

(xx) Indicate inspection, testing, analysis, standards or method requirements, where applicable. Where tests, inspections and analyses are a bid condition, the bid documents should specify that the premises of the bidder should be open at all reasonable hours for inspection by a representative of the Municipality acting on behalf of the Municipality.

(xxi) Price particulars applicable.

(xxii) The most common types of contracts provide for payments on the basis of lump sum prices, unit

prices, reimbursable cost plus fees, deposits required, establishment costs required or combinations thereof. For infrastructure or construction tenders – a bill of quantities will be required.

(xxiii) Reimbursable cost contracts should be acceptable only in exceptional circumstances, such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Such contracts should include appropriate incentives to limit costs and may only be concluded subject to the approval of the Accounting Officer. It is advisable that the reasons and formal approval for following the reimbursable route are recorded for auditing purposes.

(xxiv) Indicate in the case of capital goods, whether foreign export credit facilities should be utilised.

(xxv) Competency and expertise requirements.

(xxvi) Reporting requirements, where applicable.

(xxvii) Available documentation pertaining to the specific project, where applicable.

xxviii) Detailed product requirements (materials used, color, horsepower, minimum and maximum parameters)

(xxix) Detailed service requirements (what must be provided, what service performed)

(xxx) Performance requirements (what must it do, how is the work performed)

(xxxi) Product certifications, professional licenses or required training

(xxxii) "Build inspection" at manufacture's facility during production

xxxiii) Any space or weight restrictions

xxxiv) Who handles the installation

(xxxv) What utilities are available

xxxvi) Training requirements, instructional and maintenance materials such as manuals or DVD's

xxxvii) Delivery instructions

xxviii) When and where is it needed

xxxix) Responsibilities (who hooks up the utilities, removes debris, disposes of the old equipment)

OPERATIONAL

2.3.2.6 "Specification" is the terminology generally used to describe the requirement for goods.

2.3.2.7 "Terms of Reference" is the term used to describe the requirement for professional services.

2.3.2.8 Standards and technical specifications should promote the broadest possible competition, while assuring those critical elements of performance or other requirements for the goods, services and/or works being procured are achieved. As far as possible, accepted standards are to be specified such as those issued by Standards South Africa [a division of the South African Bureau of Standards (SABS)], the International Standards Organization or an authority recognized by the South African National Accreditation System with which the equipment or materials or workmanship should comply.

2.3.2.9 Specifications should be based on relevant characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications should be avoided. If it is necessary to quote a brand name the words **"or equivalent"** should be added after the reference. The specification should permit the acceptance of offers for goods which have similar characteristics and which provide performance at least equivalent to those specified. The quality required should

not be over specified to the extent that it will be impossible for others to offer such a product.

2.3.2.10 In the case of period contracts, all specifications, drawings etc must be numbered. When specifications are amended, the number must be amended also to indicate the year of the amendment. Thus contract ABC/2004 will be amended to ABC/2005 indicating the year of the amendment.

2.3.2.11 To simplify the evaluation process especially in terms of goods, a space should be left on the right hand side of each page, in which the bidder will indicate whether the offer complies with the specification or not. Particulars of the offer, such as any deviations will also be indicated in this space.

2.3.2.12 **Contradictory stipulations:** Care must be taken to guard against obscurities and contradictions in specifications/TOR.

2.3.2.13 **Private sector involvement:** It is a sound principle, however not compulsory, that industrial expertise should, whenever required, be involved in the drafting of specifications. Therefore, the relevant industrial sector's representative body should, where possible, be involved in the decision of who the represented person should be. ***NOTE*** that in the event that such represented person is a supplier, such supplier may not tender.

2.3.2.14 **Statutory requirements:** Care should be taken to ensure that specifications, where applicable, give effect to the requirements set by other control bodies and that they are not in conflict with legal or statutory requirements that have been stipulated.

2.3.2.15 **Conditions in specifications**: Bidding and contract conditions must not be included in specifications, but in the rest of the full bid document.

2.3.2.16 **Tolerances**: As a rule products cannot be manufactured precisely to dimension. Therefore, a specification of precise dimensions without tolerances will generally not be permitted. The necessary tolerances, which will take one of the following three forms must be set:

- A minimum dimension.
- A maximum dimension.
- A median dimension with a tolerance to either side.

2.3.2.17 **Other factors:**

- Any subjective factors playing a role in the determination of the specification/TOR can be dealt with through specification clauses and specific conditions.
- Visible or tangible factors, such as colour or style of furniture can be specified.
- Where compatibility with existing equipment is required, three broad groupings are identified:
  - Cases where the required item has to function with existing equipment, such as office automation equipment. All requirements can be specified, one of which will be that the equipment must integrate with the existing equipment, which must also be specified. Naturally this will then be a primary criterion when evaluating offers.
  - Cases where the item is required as a direct component of existing equipment. The item is regarded as a proprietary spare part and is so specified, with suitable motivation for restricted bidding if required.

- Cases where the required item must be the same as the existing items .It may be necessary, because of the large investment in the existing equipment in terms of capital, inventories and skills, to obtain the relevant approval beforehand for specifying the particular product by submitting motivation and the proposed procedure to be followed to the relevant delegated authority.

- Where the knowledge and/or skills of individuals or companies are required in respect of services, such as advertising services, facilitating services, etc. Although creative thinking is involved here, the output, which is desired, can be specified and for purposes of selecting a contractor certain evaluation criteria can be specified together with points attached to each criterion.

2.3.2.18 It must be ensured that the SABS is approached in good time for the drafting of proper specifications. Where subjectivity plays a role in a specification, evaluation criteria must form part of the specification. Only then can sound evaluations and recommendations be made on a properly regulated basis and responsible decisions taken in respect of commodities and services.

2.3.2.19 Where items are required which cannot be specified at all, e.g. the purchase of works of art, the SCM Unit must be approached beforehand with a motivated application, which includes suggestions regarding the selection procedure, and if necessary, deviation from prescribed procedures.

2.3.2.20 **Technical equipment:**

- In respect of technical equipment, apparatus, machinery and fragile goods, the following must be clearly specified so that they may be priced separately for evaluation purposes:
  - *Whether installation/erection is required.*
  - *Whether servicing/maintenance is required.*
  - *Whether demonstration/training is required.*
  - *The warranty, which is required.*
  - *Whether licenses are required and its related fees.*

2.3.2.21 Servicing and maintenance can be divided into the following categories namely:

(i) Computer Hardware

(ii) Normal maintenance

- This would entail a contract for the repair of any broken components of the installed equipment. This might either be during or after the warranty period and should be indicated in the specification if required.
- Maintenance costs are to be specified in terms of hourly tariffs for labor and the actual cost of materials. Therefore, a list of the materials is to be included in the bidding documents.
- Preventative maintenance: Preventative maintenance entails a service that is supplied to Municipality to keep the equipment in running order. The details will not be specified in the bidding documents. However, where it is known beforehand that certain parts will have to be replaced on a regular basis, these details (how, when, where and on what equipment) must be specified in the bidding documents. Any repairs done should be covered in the normal maintenance contract.

- Support/standby services: If the Municipalitydoes not wish to enter into maintenance and/or a preventive maintenance contract, a contract for the services of a skilled consultant/individual to rectify faults on equipment may be entered into on an as-and-when required basis.
- Computer Software: the Municipalitypurchases the right to install a certain software product. After the initial license purchase with a number of concurrent users, the following fees are payable:
    - *Entering into an optional maintenance agreement - this would ensure that all version changes, new releases etc. are supplied to Municipalityat the nominal monthly/annual cost as determined in the contract.*
    - *License fees - normally the software houses require that the Municipality pay renewal/license fees for the continual use of the product. This amount should normally be paid annually in advance.*
- In both cases the contract period must be determined and specified as open-ended contracts are not allowed.

2.3.2.22 **User specifications versus technical specifications**

- A technical specification determines mainly observable characteristics, such as the dimensions of the product and the material of which the product is to be manufactured. A user specification on the other hand describes mainly the result, which is to be achieved and how compliance is to be tested. The onus then rests on the supplier to offer a suitable product. Where appropriate, a special condition must prescribe that the bidder must substantiate its offer by means of a suitable certificate.
- It is desirable, wherever possible in practice, to make use of user specifications. These are usually easier to draw up and they stimulate technological development and competition.

2.3.2.23 **Specific brands or trademarks only**

- If in exceptional cases a specific brand name or trademark is used in the specification the words “or equivalent” must be inserted after the brand name or trademark, unless reasons for doing so are provided and approved accordingly.
- Specifying a brand name is acceptable where existing equipment is involved and the item comprises a component thereof, which must be of the same brand.
- Fully motivated requests for the invitation of bids from multiple/single/sole source providers for a specific brand name or trade mark only must be submitted to the relevant award structure for approval prior to the invitation of the bid.

PART 2.4: DATABASE FOR SUPPLIERS

2.4.1 ESTABLISHMENT OF THE LIST OF PROSPECTIVE PROVIDERS PER COMMODITY

Refer to SCM TR 14, 43, 44 & 45

POLICY

2.4.1.1 The Municipality shall establish and maintain a list of prospective providers per commodity for the purpose of obtaining quotations. To ensure compliance with this requirement the municipality will make use of the Central Supplier Database (CSD)

2.4.1.2 The prospective provider list shall be used effectively to promote B-BBEE as well as the participation of Small, Medium and Micro Enterprises (SMMEs).

2.4.1.3 The prospective provider list must be re-advertised at least every year.

2.4.1.4 Prospective providers will be assessed in terms of predetermined evaluation criteria established in terms of the CSD.

PRINCIPLES

2.4.1.5 The Municipality shall, at least every year, through an advertisement placed in the local representative newspaper and/or the Government Tender Bulletin, invite prospective providers to apply for evaluation and registration in different commodities and categories, as a prospective provider on the CSD

2.4.1.6 The Municipality needs to compile the list per commodity, categories, subcategories and if required, monetary categories to provide for capacity. If one list is compiled without differentiation between categories, it will not be possible to efficiently administer the list.

2.4.1.7 For construction related projects the CIDB listing can be applied.

2.4.2 SUPPLIER ADDITIONS FROM CSD

OPERATIONAL

2.4.2.1 Where the supplier is active on the CSD, and the supplier is used to source quotations, the supplier should be registered on the procurement system of the municipality.

2.4.2.2 The CSD is an online application tool, where suppliers are registered and verified online via various applications.

2.4.2.3 The supplier file on the CSD should also be transferred to the procurement system and a supplier file should be created

2.4.3 UPDATING OF SUPPLIER FILES

OPERATIONAL

2.4.3.1 The database interfaces with SARS; the Companies and Intellectual Property Commission and the payroll system. It will electronically verify a suppliers tax and BBB-EE status, and enable public sector officials doing business with the state to be identified.

2.4.3.2 The supplier file are updated regularly to ensure that their tax matters are in order with SARS and that their status with regards to being in the service of the state or close family members in the service of the state has not changed.

2.4.3.3 Where the banking details of the supplier needs to be updated on the Collaborator system, approval must be granted by the Senior SCM Practitioner: Demand; Acquisition and Tender Management or other delegated authority with the powers to approve such changes..

2.4.4 UPDATING OF THE LIST

POLICY

2.4.4.1 The prospective provider list must be updated on an continuous basis as per CSD prescripts in order to accommodate additional providers, newly established providers and for adding or amending categories of requirements.

2.4.5 UTILISATION PROCEDURE

POLICY

2.4.6.1 Up to the quotation threshold, the Municipality shall invite prospective providers (in the relevant commodity), featured on the prospective provider list, to submit a quote.

2.4.6.2 The invitation of price quotations from the provider list shall be done in such a manner that ongoing competition amongst providers is promoted.

2.4.6.3 The SCMU may request quotations from community based suppliers in a specific area or community within the municipality's area of jurisdiction for the procurement of goods, services and construction works amounting to less than R30 000 (VAT incl.)

OPERATIONAL

2.4.6.4 Once the list has been established per commodity, quotations should be invited there from.

2.4.6.5 Successful applicants are numbered and depending on the number of providers listed per category, quotations should preferably be invited from all the listed providers per commodity to promote ongoing competition.

2.4.6.6 The Municipality shall manage and utilize all its prospective providers efficiently and effectively.

2.4.6.7 Records (manual or electronic) must be kept to record full particulars of price quotations obtained from the list.

2.4.6 REMOVAL FROM THE PROSPECTIVE PROVIDER LIST

POLICY

2.4.6.1 Prospective providers may be removed from the list on request or for non-compliance with relevant legislation, proven non-delivery and proven fraud and/or corruption.

PRINCIPLES

2.4.6.2 A provider will be removed from the provider list under the following circumstances:

2.4.6.3 The entity ceases to exist.

2.4.6.4 Sole proprietor dies.

2.4.6.5 Liquidation/sequestration of the entity.

2.4.6.6 Continual proven non-delivery (two and more times) or unable to meet minimum specification continuously.

2.4.6.7 Non-compliance with legislation or statutory requirement e.g. its tax status.

2.4.6.8 Proven fraud and/or corruption.

2.4.6.9 On provider's request.

2.4.6.10 By mutual agreement, in writing.

2.4.6.11 Where required, due legal processes must be followed to deal with providers fairly in executing this process.

PART 2.5: SOURCING SUPPLIERS

2.5.1 ANALYSIS OF SUPPLY INDUSTRY

POLICY

- Determine names of suppliers/service providers for a specific commodity or groups of commodities.
- Evaluate the available specifications/terms of reference.
- Determine the location of goods as well as lead and delivery times.

OPERATIONAL

- The following aspects are to be taken into consideration:
  - *(i) What exactly is required in terms of goods and services?*
  - *(ii) What is the estimated consumption in terms of quantity and loss?*
  - *(iii) Are the goods and services required currently available in the supplying industry?*
  - *(iv) Are the goods subject to shelf life limitations?*
  - *(v) Who were the past suppliers?*
  - *(vi) Who are potentially the future suppliers?*
  - (vii) *What are the delivery, and lead times of each commodity?*

PART 2.5.2. STRATEGIC SOURCING

POLICY

2.5.2.1 The sourcing strategy shall determine where the goods and services can be obtained and through which selection mechanism.

2.5.2.2 The sourcing strategy shall address value for money principles.

PRINCIPLES

2.5.2.3 All possible methods of obtaining the requirements should be investigated, such as:

- Obtaining the goods and/or services by means of a transversal term contract;
- Could other institutions satisfy the requirements at a better price;

- Are the requirements available on the list of redundant/obsolete material/goods from other institutions.

2.5.2.4 The optimum sourcing strategy and technique should be used, taking due cognizance of the nature of the commodity or service required, the conditions of delivery, among others, just-in-time-delivery, the prospective suppliers and the goals to be promoted as contemplated in the PPPFA.

2.5.2.5 Sourcing strategies might include:

- Utilising transversal term contracts;
- Local versus international sourcing;
- Utilising a paper-based bidding system, which may include obtaining quotations, inviting competitive bids, pre-qualification of bidders and two-stage bidding;
- Utilising E-procurement; and
- Negotiations.

OPERATIONAL

2.5.2.6 Determine the lifecycle cost of each commodity. Lifecycle cost is a tool for applying the total cost of ownership (TCO) principle. Lifecycle costing includes costs associated from the commencement of the budgeting process until the requirement is disposed of.

2.5.2.7 Determine the total cost of ownership for each commodity. Total cost of ownership (TCO) is widely used for decisions on ownership of assets. It is based on the fact that all costs applicable to ownership should be included in any analysis where decisions should be made on the options of owning a capability or the contracting for the supply or the service.

2.5.2.8 Setting benchmarks for complying with targets.

2.5.2.9 Commence with the identification of contract conditions.

2.5.2.10 A sourcing strategy provides an indication of where the required goods and/or services may be procured, in the best interest of the Municipality.

2.5.2.11 Requirements are not necessarily satisfied from outside sources only. All possible sources of supply are to be investigated.

2.5.2.12 The most appropriate method of satisfying the requirement is to be established. In this regard, the range of processes as defined in the subsequent sections, are to be considered.

2.5.2.13 The provisions of Section 78 of the Municipal Systems Act, 2000 will be applicable during this determination.

2.5.2.14 One aspect is for instance to investigate the possibility of placing single orders with staggered deliveries in order to meet requirements as they arise, or utilizing the just in time (JIT) principle.

PART 3.1: ACQUISITION MANAGEMENT SYSTEM

3.1.1 ACQUISITION MANAGEMENT SYSTEM

3.1.1.1 THE ACQUISITION SYSTEM

Refer to SCM TR Part 2

POLICY

- Goods and services must only be procured in accordance with an authorised procurement processes.
- Procurement of goods and services, either through quotations or through a bidding process, must be within the threshold values as determined by National Treasury.
- Expenditure on goods and services may only be incurred in terms of an approved budget and within the limits of the amounts appropriated for the different main divisions within an approved budget.
- Take into account any Treasury guidelines on acquisition management.
- This Policy, except where provided otherwise in the Policy, does not apply in respect of the procurement of goods and services contemplated in Section 110(2) of the MFMA, including water from the Department of Water Affairs or a public entity, another Municipality or a Municipal entity, and electricity from Eskom or another public entity, another Municipality or a Municipal entity.

PRINCIPLES

- Acquisition Management is the process and management of procuring goods, services or works.
- Following the system of acquisition management shall ensure avoidance of unauthorised, irregular, fruitless and wasteful expenditure.

3.1.1.2 TYPES OF PROCUREMENT

POLICY

- When a requirement becomes known, the noted hierarchy for satisfying requirements shall apply starting first with the hierarchy of processes of obtaining stock from internal resources and then only applying the hierarchy of processes of satisfying requirements from external sources.
- Liaise and obtain permission from relevant treasury to commence with establishment and maintenance of an E-procurement system in order to ensure compatibility with other electronic systems utilised by Government.

PRINCIPLES

- Obtaining goods and services does not mean that these requirements should only be procured from outside sources.
- As part of acquisition management, all possible methods of obtaining requirements should be considered. This starts first with satisfying requirements from internal sources.
- Hereafter a hierarchy for satisfying requirements from external sources must be applied.
- Together with this, the specific rules pertaining to specific products and circumstances such as PPPs and Information Technology must be taken into account.

OPERATIONAL

- The acquisition management system can be depicted as per table 3.1.1.2 below:

Table 3.1.1.2 – Acquisition Management System - What are you buying? Is it:

IT?	***Communicate your need to SITA***
Building, Engineering or Construction works?	***The Construction Industry Development Board (CIDB) has been established by government to promote the uniform application of policy to the construction industry. When calling for construction bids, Accounting Officers/authorities should utilise the standard bidding documents issued by the CIDB.***
A Public Private Partnership?	***Ensure you follow appropriate Treasury Regulations***
Consultancy?	***Follow the procedure below and refer to Part 17.9 of this SCMPPOS***
Something else	***Continue below***

You require something not listed above: can you obtain it:

From the list of redundant/obsolete material/goods from other institutions?	***YES***	***Contact From the list of redundant/obsolete relevant institution***
	NO	***Continue below***
From another institution?	***YES***	***Contact the relevant institution***
	NO	***Continue below***
On a transversal term contract?	***YES***	***Order from the contract or contact your Treasury***
	NO	***Continue below***

You are buying something not available from the list above: Can you only buy it in SA?

NO	***Is there a need for international sourcing?***	***YES***	***Advertise opportunity***
		POSSIBLY	***Note DTI's requirement***
		NO	***Source from local supplier: continue below***
YES	***Source from local supplier***	***Continue below***	

How are you going to buy it?

Is the value up to R2000?	***YES***	***Obtain at least 3 verbal quotations, if possible from database Established for this purpose***
Is the value up to R200 000?	***YES***	***Obtain at least 3 written quotations, if possible from database Established for this purpose***
Is the value above R200 000?	***YES***	***Use competitive bidding process: See competitive bidding***

3.1.1.3 **PRE-ESTABLISHED SOURCES**

PRINCIPLES

- There are a number of pre-established sources that may be considered. Goods or services may

also be available from other government institutions.

- Items in stock - Obtain from stock according to the prescribed process. An example of this may be stationery.
- Items on pre-established Municipal contracts - Investigate whether the requirements are available on an existing contract arranged by the Municipality. If the requirement is then available on contract, order accordingly. The non-utilization of a contract could be regarded as breach of contract and will be regarded as breach of procedure.
- List of redundant, obsolete materials and supplies, if established - Divisions within the Municipality must ensure that the requirement is not available on the internal redundant or obsolete materials list if there was a need to establish such a list, before enquiring whether the requirements are available from other government institutions' list of redundant, obsolete materials or supplies, if feasible.
- Sourcing from other government institutions - Services and goods that are the core function of a specific government institution may be sourced from or through the auspices of such an institution. However, should the government institution not be able to assist the Municipality, the normal acquisitioning procedures should apply.
- Contracts **arranged by other organs of state -** The Accounting Officer may participate in any contract arranged by means of a competitive bidding process by any other organ of state, but only if:
  i. The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  ii. There is no reason to believe that such contract was not validly procured;
  iii. There are demonstrable discounts or benefits to do so; and
  iv. That other organs of state and the provider have consented to such procurement in writing.

(iii and iv do not apply if a Municipal entity procures goods or services through a contract secured by its parent Municipality or a Municipality procures goods or services through a contract secured by a Municipal entity of which it is the parent Municipality).

3.1.1.4 DIRECTIVES FOR SPECIFIC TYPES OF REQUIREMENTS

POLICY

- For the following cognisance should also be taken of additional specific prescripts, rules and thresholds guiding specific circumstances and products:
  (i) E-commerce
  (ii) Public Private Partnerships
  (iii) Building, Engineering and Construction Works

(i) E-COMMERCE

POLICY

- The AO may not acquire new information technology support for the implementation of the new SCM function without consulting SITA.

(ii) PUBLIC PRIVATE PARTNERSHIPS

Refer to section 120 of the MFMA and relevant PPP Regulations

POLICY

- The Municipality shall ensure that the provisions of section 120 of the MFMA as well as the issued Regulations are complied with when goods or services are procured through public private partnerships or as part of a public private partnership.

PRINCIPLES

- A PPP shall be dealt with strictly in terms of section 120 of the MFMA and the guidelines issued by National Treasury's SCM Office from time to time.

(iii) BUILDING, ENGINEERING OR CONSTRUCTION WORKS

Refer to the CIDBA Act, Regulations and Standards

POLICY

- The Municipality shall ensure that, in the case of a bid relating to the construction industry, the relevant prescripts of the Construction Industry Development Board pertaining to bid documentation and general conditions of contract are taken into consideration additionally.

PRINCIPLES

- Government has established the Construction Industry Development Board (CIDB) to ensure the uniform application of policy in the construction industry. Therefore the Municipality must ensure that the General Conditions of Contract and Standard Bidding Documents for Construction Projects issued by the CIDB are used for all building, engineering and construction related bids, if required and applicable to the Municipality.

3.1.2 COMPILATION OF BID DOCUMENTS

3.1.2.1 BID DOCUMENTS FOR BIDS

Refer to SCM TR 15-21

POLICY

- The criteria to which bid documentation for a competitive bidding process must comply, must:
  - (i) Take into account:
    - *The general conditions of a contract and any special conditions of contract, if specified;*
    - *Any treasury guidelines on bid documentation; and*
    - *The requirements of the CIDB, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;*
  - (ii) Include the preference point system to be used, goals as contemplated in the Preferential Procurement Regulations and Evaluation and Adjudication criteria; including any criteria required by other applicable legislation;
  - (iii) Include evaluation and adjudication criteria, including any criteria required by other applicable

legislation;

(iv) Compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;

(v) If the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish:

- If the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements
  - *For the past three years;*
  - *Since the establishment, if established during the past three years;*
- A certificate signed by the bidder, certifying that the bidder has no undisputed commitments for Municipal services towards a Municipality or other service provider in respect of which payment is overdue for more than thirty (30) days;
- Particulars of any contract awarded to the bidder by the Municipality during the past five (5) years, including particulars of any material non-compliance or dispute concerning the execution of such contract.
- A statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so what portion and whether any portion of payment from the Municipality is expected to be transferred out of the Republic; and

(vi) Stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or when unsuccessful, in a South African Court of Law;

(vii) Require supplier to supply tax references, tax clearance certificates, VAT registration numbers and identification or registration numbers;

(viii) Details of any contracts above R200 000 carried out on behalf of the Municipality within the last five years;

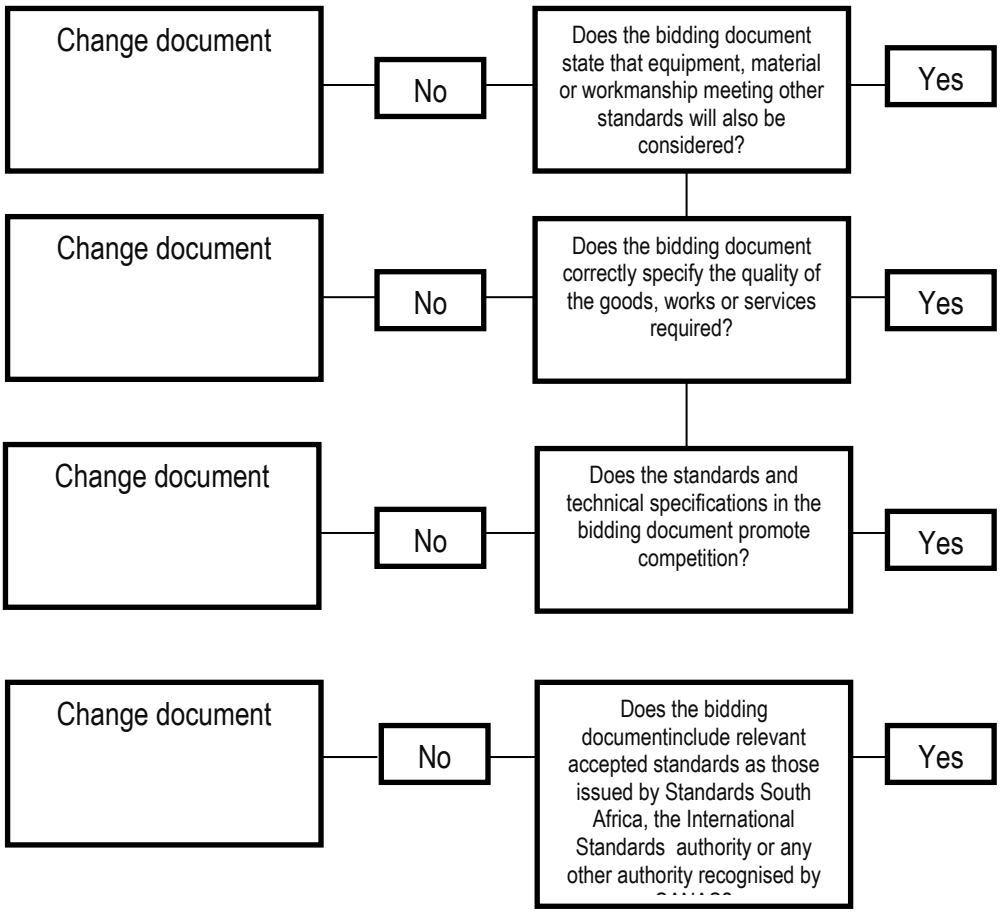
(ix) Contract management processes and procedures including provision for the AO to cancel the contract on ground of unsatisfactory performance;

(x) Any other matters as required by the MFMA and the SCM Regulations;

(xi) Performance guarantees and retention.

OPERATIONAL

- Bidding documents should ensure that all prospective bidders have an equal opportunity in being awarded the contract. As such, it should ensure that the bidding document is very specific and clear and that little is left to the interpretation of the applicant. The following check list could be used to assist in this regard. ***Table 3.1.2.1: Standards for bid documents***



3.1.2.2 **LANGUAGE OF QUOTATION / BID DOCUMENTS**

POLICY

- The Municipality shall compile all documentation in at least English.
- Bidding documents may be compiled in other languages as well, subject to stipulated circumstances.

PRINCIPLES

- Bidding documents should be worded such that they permit and encourage competition.
- Should bidding documents be compiled in an additional language, the Municipality must ensure that officials with the required language skills are available to review proposals, conduct the evaluation and award process as well as any other communication that may be required during the acquisitioning process.

3.1.2.3 **CALLING FOR BIDS**

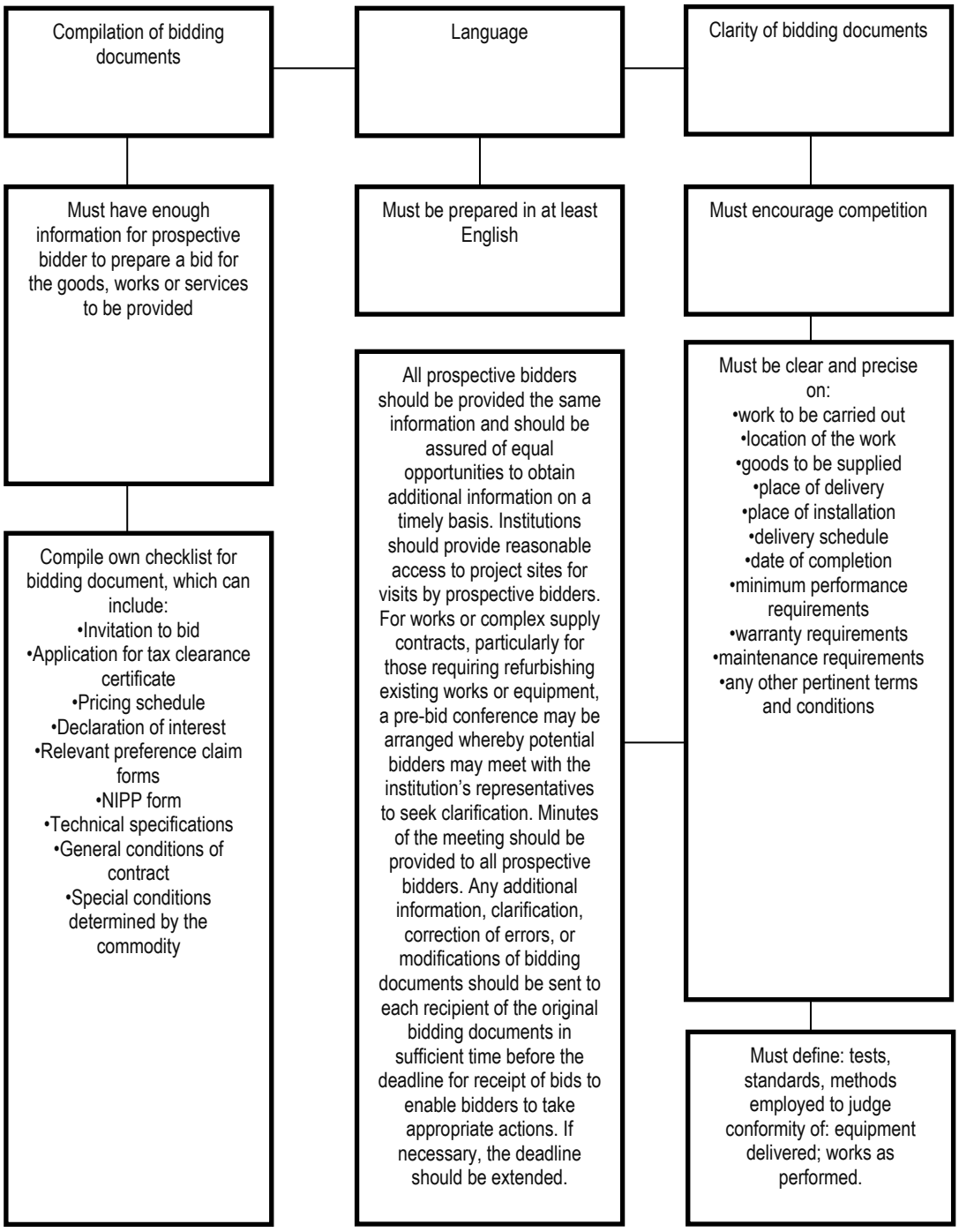
POLICY

- Bids must be invited by the SCMU unless other divisions/components have been delegated to do so.

OPERATIONAL

- The Invitation for bids will at all times consider the following as minimum requirements.

Table 3.1.2.3: Invitation of bids:



3.1.2.4 **ADVERTISING OF BIDS**

Refer to SCM TR 22

POLICY

- All bids must at least be advertised in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government

Tender Bulletin)

- The specifications must be approved by the AO, or the official delegated by the AO, prior to advertisement of the bid. In the absence of the AO this may be delegated to the acting MM or the CFO.
- The relevant media shall be considered to ensure that the target market is reached. Cost must be a consideration.
- Bids must be advertised for at least 14 days before closing time, except in urgent cases when bids may be advertised for such shorter period as the AO may determine. In the case of transactions over R10 million or which are of a long term nature the closure date for the submission of bids may not be less than 30 days.
- No bids may be advertised or close between 15 and 31 December as most firms are closed during this period and advantageous bids can therefore not be ensured. However, if circumstances requires otherwise, a submission for approval must be made to the AO or the delegated authority in this regard

OPERATIONAL

- No late requests for publishing will be accepted. SCM practitioners are therefore to ensure that everybody is aware of the final dates to submit requests to be published.

(i) The following information must be clearly stipulated in an advertisement:

- *The category of supplies, services or disposals involved.*
- *Sufficient detailed description of the requirement, including the contract period applicable.*
- *The place of work, installation or delivery, for instance, George.*
- *Bid number.*
- *Closing date and time.*
- *Where bids are obtainable from: Name of the Municipality, street address, postal address, e mail address, contact person for enquiries, telephone number, facsimile number and office hours (Mondays to Friday) applicable.*
- *A statement that bids may only be submitted on the bid documentation provided by the Municipality.*
- *Whether site meetings, information/briefing sessions are applicable and whether they are compulsory or not.*
- *Where bids must be posted or delivered to: Name of the Institution, street address, postal address, bid box address, contact person for enquiries, telephone number and facsimile number.*

3.1.2.5 **CLOSING TIME OF BIDS**

POLICY

- Closing time means the latest date and hour specified in the bid documents for the receipt of bids.
- Bids of the Municipality close at **12:00** on the day indicated in the bid documents.
- The closing of bids must be strictly observed.

3.1.2.6 **DETERMINING THE CLOSING PERIOD**

POLICY

- The normal closing period is not less than 14 days from the date of the publication of the invitation to bid.
- As a minimum requirement, where goods are to be imported, bids will close at least 5 weeks from the date of the publication.
- The principle of allowing bidders enough time to prepare comprehensive bids must be observed.
- Approval for the shortening or lengthening of the closing period must be obtained in accordance with the AO's delegated powers. Reasons for the deviation must be documented and fully motivated.
- Where a shorter period is involved, care must be taken that a reasonable time, normally not less than 14 days, is allowed for the preparation of the bidder's offer.

PRINCIPLES

- A longer closing period may be necessary where a product is to be imported or a complex response is required from bidders. Where complex supply contracts, particularly those requiring refurbishing of existing works, items or equipment are involved, this period should generally not be less than twelve weeks to enable bidders to conduct investigations before submitting their bids. In such cases, pre-bid information meetings for the bidders to seek clarifications and site visits may be necessary. The Municipality should provide reasonable access to project sites for such visits.
- In justifiable cases bids may be advertised for a shorter period as the Accounting Officer or the delegated authority may determine. A shorter closing period should allow adequate time for responses to be prepared and submitted and should not disadvantage any prospective bidder from bidding. This shorter closing period should not be shorter than 14 calendar days unless the Municipality is certain that all prospective bidders are able to deliver a response in a shorter time.

3.1.2.7 **DETERMINING THE VALIDITY PERIOD**

POLICY

- The validity period should allow the Municipality sufficient time to finalise the evaluation and award of the quotation/bid.
- The period for which the bids are to remain valid, irrevocable and open for acceptance must be indicated in the bid documents.
- Bids shall remain valid for acceptance for a period of twelve (12) months after the expiry of the original validity period, unless the municipality is notified in writing of anything to the contrary by the bidder.
- The validity of bids may be further extended by a period of not more than six months subject to mutual agreement and administration processes and upon approval by the Accounting Officer.
-

OPERATIONAL

- Bidders should be required to submit bids valid for a period specified in the bidding documents. This

period should be sufficient to enable the Municipality to complete the comparison and evaluation of bids, review the recommendation, clear the bidder and adjudicate and award the contract.

3.1.2.8 **AVAILABILITY OF BID DOCUMENTS**

POLICY

- Bid documents must be ready and available before the requirement is advertised.
- Bid documents may be collected by or may be e-mailed or posted to prospective bidders.
- Where bid documents are posted to prospective bidders, the bidder will be responsible for the postage or courier charges and collection at the municipal offices.

OPERATIONAL

- Bid documents may be made available to bidders at more than one location, should the Municipality deem it necessary.
- Prospective bidders must be allowed to collect documents at the indicated locations as from the date that the requirement is advertised. The bid document must also provide for prospective bidders to request the document in writing for e-mailing or posting to the prospective bidder.
- Should posting of documents be requested, the Municipality should not take responsibility on behalf of the bidder for receiving it on time. This is the responsibility of the prospective bidder.

3.1.2.9 **SALE OF BID DOCUMENTS**

POLICY

- The Municipality shall under normal circumstances not sell its bid documents, but make it available free of charge.
- The Municipality shall make bid documents for procuring of goods and services available on their website and E-Tender free of charge. These documents can be downloaded by interested bidders.
- Tender documents for construction projects and consultancy services shall be purchased by interested bidders.
- In the event that bid documents are being sold, the costs thereof must only be to cover actual preparation cost and not for the purpose of making a profit. For bids exceeding R200 000 in value, a nominal fee will be determined after consultation with relevant stake holders In the case of CIDB related bid documents the price for the sale of these documents will be determined on a case by case basis
- The fee should not be so high as to discourage prospective bidders.

PRINCIPLES

- The Council charges a non-refundable deposit for provision of bid documents.
- This is subject to annual review.
- Values of the deposits will be determined annually

OPERATIONAL

- The Municipality, as a matter of principle, do not charge a fee for bid documents as the cost of administering the receipt of the money outweighs the benefit of the monies to be collected.

- In the event that bid documents are being sold, the costs thereof must only be to cover actual preparation cost and not for the purpose of making a profit.
- The SCMU will determine the cost for bid documents and administer the receipt of such costs.

3.1.2.10 **RESPONSES RECEIVED**

POLICY

- The Municipality shall maintain a register/list of responses to the advertisement or the individuals/organisations targeted in the case of bids above R 200 000.
- The response list must contain the following information:
  (i) Bid number.
  (ii) Name of the bidder who documents were issued to.
  (iii) Name of the person/organization that collected the bid on behalf of the bidder.
  (iv) Name of the person/organization on whose behalf the document is collected, the phone number, the fax number and contact person of the prospective bidder.
  (v) The date and time the document was collected or the date the document was posted/e-mailed.
- The same particulars as mentioned above, where applicable, must also be collected where bid documents are requested by phone.
- Bidders should take note that if bidding documents are posted, it is not the responsibility of the Municipality to ensure that the bidder receives the document on time in order to prepare a response.

3.1.2.11 **ELEMENTS FOR INCLUSION IN BID DOCUMENTS**

POLICY

- The Municipality's bid documents shall promote uniformity through standardised bid documents, where possible.
- Bid documentation, evaluation and adjudication criteria, and general conditions of contract shall be in accordance with the instructions of National Treasury and in accordance with any applicable legislation.
- Bidders shall all receive the same information in documentation and should be assured of an equal opportunity to obtain additional information on a timely basis to ensure fairness.
- Where feasible, promote subcontracting and joint ventures with SMME's.
- Bid documentation shall include evaluation and adjudication criteria, including the criteria prescribed in the PPPFA and the B-BBEE Act.
- Clearly stipulate in bid documents that suppliers must submit B-BBEE status level verification certificates or certified copies thereof with bids.

3.1.2.12 **BIDS BASED ON FUNCTIONALITY**

PRINCIPLES

- Not all bids should be invited on the basis of functionality as a criteria
- A need to invite bids on the basis of functionality as a criterion depends on the nature of the required

commodity or service taken into account quality, reliability, viability and durability of a service and the bidders technical capacity and ability to execute a contract.

- When an institution invites a bid that will also be evaluated on the basis of functionality as a criterion, the AO must clearly specify the following aspects in the bid documents:
- Evaluation criteria for measuring functionality
  (i) May include criteria such as the consultant's relevant experience for the assignment, the quality of the methodology;
  (ii) The qualification of key personnel;
  (iii) Transfer of knowledge etc.
- Weight of each criteria
  (i) The weight that is allocated to each criterion should not be generic but should be determined separately for each bid on a case-by-case basis.
- Applicable value
  (i) The applicable value that will be utilized when scoring each criterion should be objective.
  (ii) As a guide, values ranging from 1 being poor, 2 being average, 3 being good, 4 being very good and 5 being excellent, may be utilised
- Minimum qualification score for functionality
  (i) The minimum qualifying score that must be obtained for functionality in order for a bid to be considered further should not be generic. Should be determined separately for each bid on a case-by-case basis. The minimum qualifying score must not be prescribed so low that it may jeopardize the quality of the service required nor so high that it may be restrictive to the extent that it jeopardized the fairness of the SCM system.

3.1.2.13 **THE SCM UNIT RESPONSIBILITY**

OPERATIONAL

- The SCMU is responsible for compiling the final bid documents on receipt of a request by the user division accompanied by specification/terms of reference as well as the evaluation criteria as compiled by the Bid Specification Committee and the approval received from the AO or the delegated authority.

3.1.2.14 **USER DIVISION REQUESTS FOR BIDS**

OPERATIONAL

- Regarding specifications/TOR for goods, services and/or works, the following must be provided by the user division (inclusive of the approved specification) to the officials of the SCMU when quotations/bids are to be invited:

(i) Description of the requirement.
(ii) Approved specification or terms of reference.
(iii) Approved evaluation criteria.
(iv) A formal contract where it is to be concluded in addition to the contract form. Full reasons must be

given.

(v) Any special conditions applicable.

(vi) The required contract period must be precisely stated if applicable. For example, a contract period of 12 months or a contract commencing on the specific date and concluding on a specific date.

(vii) Particulars of information session, where applicable.

(viii) Whether the information session is compulsory or not and the address and time where the session is to take place as well as a contact person and telephone number in this regard.

(ix) Where the submission of alternative bids (alternative designs, materials, completion schedules, payment terms, etc.) is permitted, the conditions for their acceptability and the method of evaluation in such instances should be clearly stated.

(x) Indicate the estimated financial impact and whether funds are available.

(xi) Indicate the latest possible date that the contract must be in place.

(xii) *Contact particulars of a knowledgeable person (user division) that the SCMUmay contact for technical assistance.*

3.1.2.15 **BID DOCUMENTATION PACK**

PRINCIPLES

- The General Conditions of Contract (GCC) are applicable to all bids with the exception of bids pertaining to the building, engineering and construction industry for which the CIDBA provisions will apply.
- The standard wording of the GCC may not be amended, but may be supplemented by special conditions, thus covering any aspect not covered by the GCC if necessary. Should the special conditions be in conflict with the GCC, the provisions of the special conditions will prevail.
- The one condition that must be covered by special conditions is payment terms.

3.1.2.16 **STANDARD BIDDING DOCUMENTS**

OPERATIONAL

- Bid documents may be customized to address contract and project specific issues. The standard wording of the Tax Clearance Certificate and the National Industrial Participation Programme (NIPP) form may not be amended.
- In cases where special conditions make it necessary to deviate from the standardised bid documentation it is advisable that the AO's approval be obtained for such deviations. The motivation for the deviations is to be documented.
- It would however be efficient to customise a set of the documentation specifically for the Municipality in order to reduce the time it takes to review the standard forms per requirement.
- The SCMU will develop and maintain such standardised forms and bid documentation, inclusive of the prescribed MBD documents issued by the NT.

3.1.2.17 **ELEMENTS TO TAKE INTO ACCOUNT WHEN COMPILING BID PACK**

OPERATIONAL

- Allocate a sequential bid number through a central point for numbering developed and maintained in the SCMU.
- Determine the closing date and time of the bid.
- Determine the validity period applicable.
- The price must be quoted in Rand.
- Compliance with any statutory requirements deemed necessary.
- Indicate evaluation process and criteria applicable.
- Evaluation method, for example, the two-envelope system.
- The format in which the bid must be submitted, such as the information on the envelope and sealing instructions.
- The number of copies required. Do not ask for unnecessary copies or for an excessive number of copies.
- The methods of bid delivery allowed such as fax, e-mail, post and hand delivery to a bid box.

3.1.2.18 **PRE-BID INFORMATION/SITE MEETINGS**

POLICY

- Minutes of the meeting should be provided to all prospective bidders.
- Any additional information, minutes of meetings, clarification, correction of errors, or modifications of bid documents should be sent to each recipient of the original bid documents at least 10 calendar days before the closing date and time for receipt of bids to enable bidders to take appropriate actions.

3.1.2.19 **PARTICULARS OF INFORMATION SESSION**

OPERATIONAL

- The bid documentation must indicate whether information sessions are compulsory or not and if so, the address and time where the sessions are to take place as well as a contact person and telephone number in this regard.
- Minutes must be kept of information sessions and distributed to all attendees.
- After such meetings the user division must ensure that bid documents are still accurate and no amendments are required.
- Bidders must be informed that in the event of any inconsistency between comments made at the Presentation and requirements stipulated in the bid document, the requirements of the bid document will prevail, unless it was amended in writing.

3.1.2.20 **PARTICULARS OF PRESENTATION MEETINGS (these are meetings during the bid evaluation process)**

OPERATIONAL

- The bid documentation must indicate that presentation meetings are compulsory and the address and time where the meetings are to take place as well as a contact person and telephone number in this regard.
- Where the time of the meeting cannot be determined it should be clear in the bidding documents that prospective bidders will be informed of the time at a later and appropriate date.
- The bid evaluation criteria must indicate whether the presentation meeting will be scored or will only serve for clarification purposes.

3.1.2.21 **CHANGING INFORMATION BEFORE CLOSING TIME**

POLICY

- It is preferable to cancel a bidding invitation and to invite fresh bids if conditions or the specification or any other information have to be materially changed before the closing time or if mistakes are discovered in the documents before the closing time.
- In this regard also adhere to the provisions of the PPPFA Regulations where all bids received are above or below the stipulated preference scoring.

PRINCIPLES

- Where the information that has to change is not material or will not have a material influence on the bidders proposals, all prospective bidders must be informed before the closing date of the bid and in time to take the information into consideration.
- Where the information that has to change is material or will have a material influence of the crafting of the bidders' proposals, the bid must rather be cancelled and fresh bids invited with the amended information

3.1.2.22 **POSTPONEMENT OF CLOSING DATE**

POLICY

- The closing date may be postponed only if all prospective bidders can be advised of the postponed date in writing before the original closing date and in the case of an advertised bid invitation, the closing date may be postponed only if the postponed date can be timely advertised, before the original closing date.

PRINCIPLES

- The closing date may only be postponed if there is a valid reason for the postponement and if there is not sufficient time to advertise the postponement, the cancellation of the bid must be considered and fresh bids must be invited.

3.1.3 RECEIPT AND OPENING OF BIDS

3.1.3.1 ANALYSIS OF PROCUREMENT REQUESTS

- **Receiving and opening procedures for quotations from R 301 up to R2 000**

Refer to SCM TR 16

POLICY

(i) A fair and transparent process shall be followed for the closing, receiving, opening and processing of quotations.

(ii) Verbal quotations may be obtained, but the quotation of the preferred supplier must be in writing

.

- **Quotations received for small contractors above R2000 up to R30 000**

POLICY

(i) Quotations must be submitted in writing preferably by hand or per mail, but may also be faxed or e-mailed.

(ii) Bid box procedures may be used where the circumstances so require.

OPERATIONAL

(iii) Quotations received by post, courier or electronic means should be administratively dealt with and immediately be channeled to the physical address where quotations are to be received.

(iv) The quotation should be date stamped and sorted according to their particular quotation numbers.

(v) Where a quotation is received, without a quotation number on the envelope, it must be opened, the quotation number ascertained, written on the envelope.

(vi) Any documents not signed or not submitted should be noted.

- **Quotations above R2000 up to R30 000**

Refer to SCM TR 16

POLICY

(i) Quotations accepted must be submitted in writing preferably by hand or per mail, but may also be faxed or e-mailed.

(ii) Bid box procedures may be used where the circumstances so require.

OPERATIONAL

(iii) Quotations received by post, courier or electronic means should be administratively dealt with and immediately be channelled to the physical address where quotations are to be received.

(iv) The quotations should be sorted according to their particular requisition numbers

(v) Where a quotation is received, without a quotation number on the envelope, it must be opened, the quotation number ascertained, written on the envelope

(vi) Any documents not signed or not submitted should be noted.

- **Formal Written Price Quotations above R30 000**

Refer to SCM TR 17 and 18

POLICY

(i) A fair and transparent process shall be followed for the closing, receiving, opening and processing of formal written price quotations

(ii) When procuring goods, services and works of a complex nature, the formal or competitive bidding process may be utilized at the discretion of the Head: SCM.

(iii) Quotations must be obtained in writing from at least three different providers whose names appear on list of accredited prospective service providers

(iv) Quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria prescribed in this policy

(v) Where it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Chief Financial Officer (CFO) or an official designated by the CFO

(vi) The names of the potential providers and their written quotations must be recorded

(vii) Formal written price quotations must be advertised for at least seven (7) days on the website and official notice board/s of the municipality. It may also be advertised in the local and or provincial newspapers if deemed necessary

(viii) Formal written quotations maybe submitted by hand, courier or e-mail.

(ix) A bid box shall be visibly provided on the premises of the Municipality and maybe utilised for the submission of formal written price quotations.

(x) A formal written price quotation may not be considered unless the provider has furnished the following information:

- *Full name;*
- *Identification number or company or other registration number;*
- *Tax reference number and VAT registration number, if any;*
- Has authorized the Municipality to obtain a tax clearance from SARS that the provider's tax matters are in order; and
- Has indicated;

a) *Whether he or she is in the service of the state, or has been in the service of the state in the previous 12 months;*

b) *If the provider is not a natural person, whether any of its directors, managers, principle shareholders or stakeholder is in the service of the state; or has been in the service of the state in the previous 12 months; or*

c) *Whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder is in the service of the state or has been in the service of the state in the previous 12 months.*

(xi) In the event of procuring goods, services and works of a complex nature, the bid documentation pack for formal tenders maybe utilised and should consist of the following:

- Covering letter, which should at least include the bid number, description of the requirement, name of the organization by whom it is required and the closing date and time.

(xii) Use standard bid documents that include, but are not limited to the following:

- *Invitation to Bid that is the bidders' consent if signed to enter into a contract under the conditions specified in the bid documents, should the offer be accepted.*
- *Tax Clearance requirements.*
- *Relevant pricing schedule.*
- *Declaration of interest.*
- *Relevant preference points claim form.*
- Specification/Terms of reference.
- Evaluation criteria.
- General conditions of contract.
- Special contract conditions.
- Copy of the formal contract or service level agreement (SLA) where applicable.
- Adjudication and evaluation criteria and scores.

OPERATIONAL

(xiii) Quotations received by post, courier or similar service should be administratively dealt with and immediately be channeled to the physical address where bids are to be received.

(xiv) Quotations received after the closing time at the physical address indicated in the bid document, must be considered as late and be dealt with accordingly.

(xv) Where the bid box is utilised, it may be opened more frequently than the actual closing dates and times if there are good reasons, for example, when a bidder asks for the return of the bid before closing time and/or when the box is full, provided that it is done openly and there are at least two people present.

(xvi) No quotations maybe received after the closing time.

(xvii) The bids submitted in the bid box should be date stamped on the envelope and sorted according to their particular bid numbers. Once opened the bid document should also be date stamped on at least all the standard documentation and pricing schedule

(xviii) Where the bid box is utlised, the bids must be opened in public.

(xix) Bid results may be published on the Municipality's web site.

(xx) Information on bids received must be captured in a "Bids received record" that may be a register/list/spreadsheet that must contain at least the following information:

- *Bid number.*
- *Closing date.*
- *Date and time received.*
- *Name of the bidder.*
- *Amount*

- *B-BBEE contribution level*

.

- **Admission of bids above R200 000**

POLICY

(i) Bids received by facsimile transmitter, telegram, telex, e-mail, post or similar media do not meet the requirements and must be rejected.

(ii) Only original bid documents, which are submitted in the prescribed manner and where all essential forms are originally signed in ink before submission, may be accepted as valid.

(iii) Bidders shall be allowed to submit bids by mail, by courier or by hand into the bid box or at the physical address of the Municipality (reception, over the counter at the SCMU as applicable) before the closing time of the bids.

(iv) All bids will then be kept unopened in safe custody until the closing date and time of the bids.

- **Confidentiality**

POLICY

(i) After public opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning awards should not be disclosed to bidders or other persons not officially concerned with the process, until the successful bidder is notified of the award.

- **Bids received late**

POLICY

(i) Bids are late if they are received at the address indicated in the bid documents after closing date and time.

(ii) Bids received late shall not be considered and shall be returned unopened to the bidder.

(iii) Where no bid or no acceptable bid has been received, the bid has to be re-advertised.

OPERATIONAL

(i) Bids received late must be recorded as such.

(ii) Late bids received must, where feasible, be returned accompanied with the explanation that the bid was received late.

(iii) Where the address of the bidder is not indicated on the envelope, it is opened to obtain the necessary particulars and returned to the bidder.

3.1.4 EVALUATION AND ADJUDICATION OF BIDS

POLICY

3.1.4.1 All bids duly lodged shall be taken into consideration and evaluated.

3.1.4.2 For a bid to be considered it must comply with all the requirements of the bid documentation and be

placed in the official bid box located at the SCM offices situated at the Post Office Building situated in 19 Main Road, Riversdale.

3.1.4.3 The Municipality shall base its evaluation solely on an examination of the relevant statutory and/or predetermined evaluation criteria.

3.1.4.4 Evaluation criteria shall promote the areas of finance (commerce), technical compliance/ability, functional requirements and preferential procurement.

3.1.4.5 Members involved in the evaluation process shall be honest, fair, impartial, and transparent.

3.1.4.6 Bid Evaluation Committee(s) should be familiar with and adhere to prescribed legislation, directives and procedures in respect of SCM.

3.1.4.7 No person should interfere with the SCM system of the Municipality; or amend or tamper with any bid after its receipt.

3.1.5 REASONS FOR REJECTION

POLICY

3.1.5.1 The Municipality must reject a proposal for the award of a contract if the recommended bidder has committed a proven corrupt or fraudulent act in competing for the particular contract.

3.1.5.2 The Municipality may disregard the bid of any bidder if that bidder, or any of its directors:

- Have abused the SCM system of the Municipality.
- Have committed proven fraud or any other improper conduct in relation to such system.
- Have failed to perform on any previous contract and the proof exists.

3.1.5.3 Such actions must be communicated to the National Treasury.

3.1.6 COMPLIANCE CHECK PROCEDURES

OPERATIONAL

3.1.6.1 Before actual evaluation the SCMU shall do a compliance check that the quotation/bid documentation complies with the predetermined conditions and that all required forms and information are submitted, completed in full and legible.

3.1.6.2 The SCMU should ascertain whether quotations/bids received:

- Have been properly signed in ink in the original.
- The bidder(s) provided an original, valid tax clearance certificates or has an original valid tax clearance certificate on the municipal database.
- Municipal tax and rates are not in arrears for a period exceeding three months.
- Are substantially responsive to the quotation/bid documents.
- Are accompanied by the required securities, if applicable.
- Are otherwise generally in order.

Refer to the Supreme Court of Appeal judgment in the case of Millennium Waste Management vs Chairperson, Tender Board: Limpopo Province

May a bid be disqualified due to the fact that the bidder did not submit sufficient proof that its Municipal accounts are up to date or did not submit a valid tax clearance certificate?

In order to respond to this question, the following two issues needs to be considered:

(i) Is it a statutory requirement that the bidder must submit proof that its Municipal rates and taxes and Municipal service charges are not in arrears?

(ii) Does non-submission by the bidder of proof that it's Municipal rates and taxes and Municipal service charges are not in arrears, constitute a material defect making a bid non-responsive?

In response to (i), it is NOT a statutory requirement that the bidder must submit proof that its Municipal rates and taxes and Municipal service charges are not in arrears. The SCM Treasury Regulations, in two instances clearly prescribes that the bid evaluation committee or bid adjudication committee must CHECK whether such Municipal rates are in arrears. The onus remains on the committee's or Municipality to CHECK whether Municipal rates are in arrears and not on the bidder to confirm such.

It is understood that in order to limit the administrative burden on the Municipality, the bidders are requested to submit such proof. This administrative process request however, does not absolve the Municipality from its legislatively prescribed responsibility to execute such checks and cannot be regarded that the 'burden of proof' is transferred on the bidders.

In response to (ii), non-submission by the bidder of proof that it's Municipal rates and taxes and Municipal service charges are not in arrears, DOES NOT constitute a material defect making the bid non-responsive. The rationale is as follows:

(i) SCM Treasury Regulation 21(d)(ii) clearly stipulates that the need for a certificate of this nature if applicable in the event of tenders expected to exceed R 10m in value – which this tender is not.

(ii) The declaration of interest duly signed by a bidder further confirmed that neither the bidder nor its directors own any Municipal rates and taxes or Municipal charges to the Municipality.

(iii) As discussed above, by law, the onus remains on the committees or Municipality to CHECK whether Municipal rates are in arrears and that it may be argued that the Municipality did not follow just administrative actions by transferring such responsibility to bidders.

(iv) Case law confirms in the obiter of the Supreme Court of Appeal in the case of Millennium Waste Management vs. Chairperson, Tender Board: Limpopo Province:

> *"Since the adjudication of tender constitutes administrative action, of necessity the process must be conducted in a manner that promotes the administrative justice rights while satisfying the requirements of PAJA....Conditions such as the one relied on by the tender committee should not be mechanically applied with no regard to bidders constitutional rights. By insisting on disqualifying the appellant's tender for an innocent omission, the tender committee acted unreasonably. Its decision in this regard was based on the committee's error in thinking that the omission amounted to a failure to comply with a condition envisaged in the Preferential Procurement Act."*

Submission of proof that its Municipal rates and taxes and Municipal service charges are not in arrears is NOT a requirement of the SCM Treasury Regulations and it may be argued that the Municipality erred in its thinking that the omission to submit such proof is a failure to comply with the SCM Treasury Regulations. Such decision may then be regarded as unreasonable.

CONCLUSION

(i) It is not a statutory requirement that the bidder must submit proof that its Municipal rates and taxes and Municipal service charges are not in arrears.

(ii) Non-submission by the bidder of proof that its Municipal rates and taxes and Municipal service charges are not in arrears, does not constitute a material defect making a bid non-responsive.

3.1.6.3 The SCMU should ensure that the provider's name (including the name of the company, name of any director or partner) does not appear on the list for restricted bidders/persons or on the Register for Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act.

3.1.6.4 If a quotation/bid is not substantially responsive that is, it contains material deviations from or reservations to the terms, conditions and specifications in the quotation/bid documents, it should not be considered further.

3.1.7 SIGNING OF BIDS

POLICY

3.1.7.1 In order to avoid confusion regarding precisely what must be signed for a valid bid, the Invitation to Bid or photocopy thereof must be signed in ink.

3.1.7.2 All declarations must also be signed to qualify as valid claims.

PRINCIPLES

3.1.7.3 Bids not accompanied by an Invitation to Bid, or where the form is not signed, but otherwise complies with all the bid requirements and is recommended in terms of the delegated powers, may be considered and finalised by the Bid Adjudication Committee, the Accounting Officer or delegated authority.

3.1.7.4 If such an unsigned bid is declared to be valid, the bidder must sign it in ink, before the parties sign the contract form.

3.1.7.5 Copies or facsimiles of bids, which have been submitted in the prescribed manner and where the Invitation to Bid or equivalent has been signed in ink before submission, are accepted as the official bids. No other document received in confirmation thereof is thereafter accepted as the official bid even if it is the original of the facsimile copy and is also signed in ink.

3.1.8 AUTHORITY TO SIGN BID DOCUMENTS

POLICY

3.1.8.1 The Invitation to Bid must make provision for the signatory to indicate that he or she is duly authorized to sign the bid documentation. A duly authorized person must sign the bid document.

3.1.9 TAX CLEARANCE CERTIFICATES

Refer to SCM TR 43 and PPPFA Regulations, 2011

POLICY

3.1.9.1 As per SCM TR 43, the Municipality must reject any bid from a supplier who fails to provide written proof from SARS that the supplier either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations. As proof that there are no outstanding tax obligations, a valid Tax Clearance Certificate must be submitted in the original.

3.1.9.2 In all cases where the bidder did not submit the Certificate by the closing time, or the certificate is not in the original or not valid, the bidder must be afforded an opportunity and be requested to submit the Certificate by the date and time as determined by the Bid Evaluation Committee. Recommendations with regard to such matters must be submitted to the relevant evaluation and award structures.

3.1.9.3 Where the Municipality is in possession of a valid tax clearance certificate from a bidder, i.e. due to its previous application as member on the list of prospective suppliers, the SCM Unit must make a note to such effect on the bid.

3.1.9.4 No contracts may, however, be awarded to bidders who have failed to submit the original Tax Clearance Certificate within the relevant period and they must be reported to SARS.

OPERATIONAL

3.1.9.5 Where a "Request for Information" (RFI) was advertised, it is not necessary for tax clearance certificates to be presented. However, should it not be included in the RFI, it must be included as a bid condition in the documents distributed to the bidders who did qualify and thus taken into consideration at that stage.

3.1.9.6 All databases reflecting contracting activities should be made accessible to officials of the SARS.

3.1.10 SUBMISSION AND SIGNING OF CERTIFICATES

POLICY

3.1.10.1 In all cases where the relevant preference claim form has to be submitted and a provider had the intention to claim as evidenced by the fact that he did fill in the preference form or gave other indications of wishing to claim preference, the bidder must be allowed to complete and/or sign the declaration.

3.1.10.2 Recommendations with regard to such matters must be submitted to the relevant Bid Evaluation Committee or relevant delegated authority

PRINCIPLES

3.1.10.3 If the potential provider is a supplier but not the actual manufacturer and will be sourcing the product(s) from another company, a letter from that company(s)/supplier(s) confirming firm supply arrangement(s) in this regard, has to accompany the bid and failure to submit the document may invalidate the bid.

3.1.10.4 The aforementioned statement is to be included in the relevant bid documents as a special condition.

3.1.10.5 The said company/supplier must confirm that it has familiarised itself with the item description, specifications and conditions and if the quotation/bid consist of more than one item, it should be clearly indicated in respect of which item(s) the supportive letter has been issued.

3.1.11 DECLARATION OF INTEREST

POLICY

3.1.11.1 A form for the declaration of a provider's position and interest must be included with the bid documents.

3.1.11.2 An official who is involved in the evaluation and recommendation process, or who is in any way involved with the procurement process, shall also certify, as part of the recommendation that he/she complies with The Prevention and Combating of Corrupt Activities Act.

3.1.11.3 All officials who can influence the award of a quotation/bid, are seen as officials who are involved in the recommendation process.

3.1.11.4 The register of attendance of the members of the Bid Evaluation Committee and the Bid Adjudication Committee must contain the following:

"I, the undersigned, ...(full name and surname)

- ***Declare that I did not <u>purposefully</u> unlawfully favor or prejudice anyone in the decision making process in the recommendation and award of the quotation/bid.***
- ***Declare that neither I nor, as far as I am aware, any member of my organisation or my immediate family have any interests (pecuniary or otherwise) which could possibly be construed as having any influence on the proper and objective performance by me of my duties in relation to the investigation and any activities relating thereto nor to unduly influence anyone in this matter.***
  ****Declaration if any:***
  _____
- ***Agree to keep all information and documents relating to this matter confidential and not disclose or communicate the same to any person or persons without the prior written consent of the Municipality.***
- ***Agree to keep the results of any processes in relation to the investigation confidential.***
- ***Acknowledge receipt of confidential information and documentation from the Municipality and agree not to make any copies of, or take any extracts from them except as may be necessary and essential for the due and proper performance of my duties towards the Municipality.***
- ***Acknowledge that conflicts of interests, breach of confidentiality and unauthorised disclosure are subject to the provisions and penalties contained in the Municipal Financial Management Act, 2003 (Act 56 of 2003) and relevant regulations.***
- ***Agree to immediately and truthfully declare to the Municipality any changes, which may occur that relate to the matters stated in Clause 1 of this declaration during the rendering of the Services***

3.1.11.5 All officials who are involved in the decision making process must sign a similar affidavit.

3.1.12 PROVIDERS OWN CONDITIONS

POLICY

3.1.12.1 The conditions as contained in the quotation/bid documents enjoy precedence.

3.1.12.2 All providers must accept these conditions.

3.1.12.3 However, it sometimes happens that providers set their own conditions, which might be in conflict with the quotation/bid conditions. Such own conditions set by providers can be recommended for acceptance where it is in the interest of the Municipality to do so and where the interests of other providers are not prejudiced.

3.1.12.4 Where the providers' own conditions are not in the best interest of the Municipality, the provider must be requested to withdraw his conditions.

3.1.12.5 If providers are not prepared to withdraw unacceptable or conflicting conditions, reasons why such conditions must be accepted must be submitted to the relevant Bid Evaluation Committee for approval or alternatively the quotation/bid may be passed over.

PRINCIPLES

3.1.12.6 A provider must not automatically be requested to withdraw his own conditions since such conditions are not necessarily unacceptable.

3.1.12.7 A recommendation by the relevant delegated authority that such a request should be made to the provider concerned must be submitted to the relevant Bid Evaluation Committee for the necessary consideration or for passing over due to it being unacceptable.

3.1.12.8 When advance payments are required in a quotation/bid, this must be identified as a conflicting condition and a motivated recommendation must be submitted to the relevant award structure.

Normally such a condition is accepted only if a counter offer that will eliminate the risk, such as a bank/performance guarantee, is made.

3.1.13 EVALUATION AND AWARD FROM R30 000 AND UP TO R200 000

3.1.13.1 EVALUATION FROM R30 000 AND UP TO R200 000

POLICY

- For formal written price quotations from R30 000 and up to R200 000, where the requirement is not technically complex and where there are no major risks involved, the delegated authority shall evaluate bids received and submit a recommendation regarding the award of the bids to the CFO or Delegated Official (preferably the Manager: SCM or other senior official within the SCM unit).
- The procurement of goods, services and works of a complex nature maybe tabled for evaluation by the Bid Evaluation Committee
- The evaluator and awarder should consist of different members to ensure that a transparent review of the evaluation is undertaken.
- Bids are to be evaluated against the predetermined criteria in the bid document. The criteria to be taken into account, are inter alia:

(i) Compliance with the legality and special conditions.

(ii) Specifications/terms of reference evaluation = functionality

(iii) Preferential procurement:

→ *Price*

→ *Preference*

(iv) Capability / ability of the bidder to execute the contract and other latent factors.

OPERATIONAL

EVALUATION STEPS

i. From R30 000 to R 200 000, the delegated authority should check whether the information received from the SCMU is correct and ascertain him/herself of all the information and facts contained in each bidding document, which includes the preference points score sheet and prescribed details.
ii. The delegated authority should compile an evaluation team who shall evaluate the strengths, weaknesses and peculiarities of each offer from the highest to the lowest point scorer.
iii. All comments on each bid as well as the recommendation must be recorded in a recommendation report that must be signed off by the delegated authority.
iv. In the case of professional services, offers are evaluated on functionality and depending on the set threshold, then for price as well as Preferences where applicable. The combined percentages for price and preferences must equal 100%.
v. Where the evaluation team consists of more than one evaluator as may be determined in the AO's delegated powers, evaluations are not based on consensus decisions. Each evaluator scores each bid individually according to the predetermined criteria and weightings as reflected in the original bid documents. Calculated average points for service providers are used for evaluation

purposes.

vi. The final recommendation report must be submitted to the relevant delegated authority for sign off and final award.

vii. Providers shall not be allowed to amend their offers in any material manner, but may be requested to clarify any ambiguities and/or information that are unclear or illegible.

3.1.13.2 **AWARD STRUCTURES UP TO R200 000**

Refer to SCM TR 26

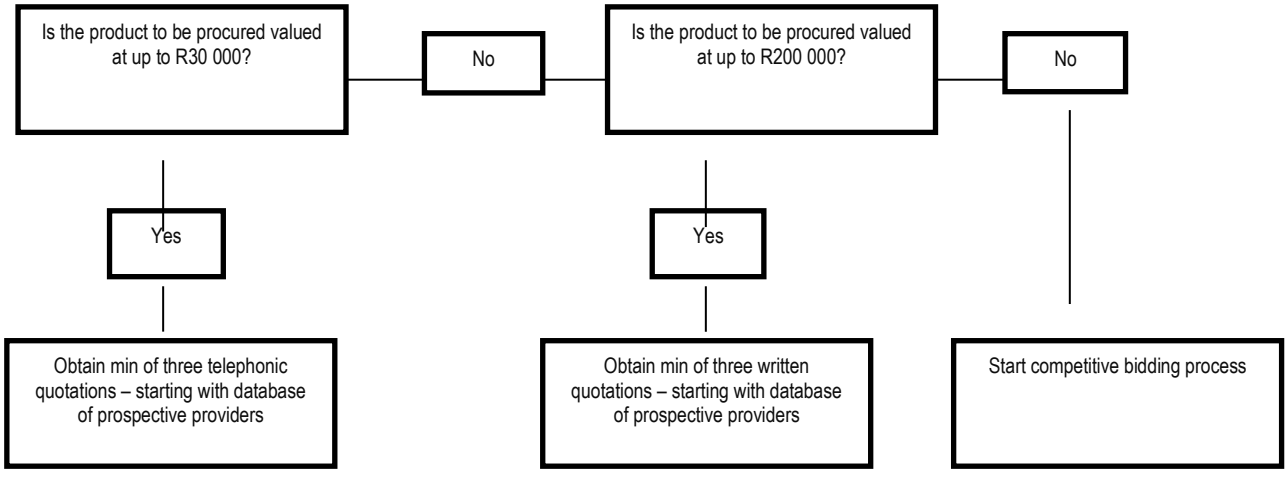
POLICY

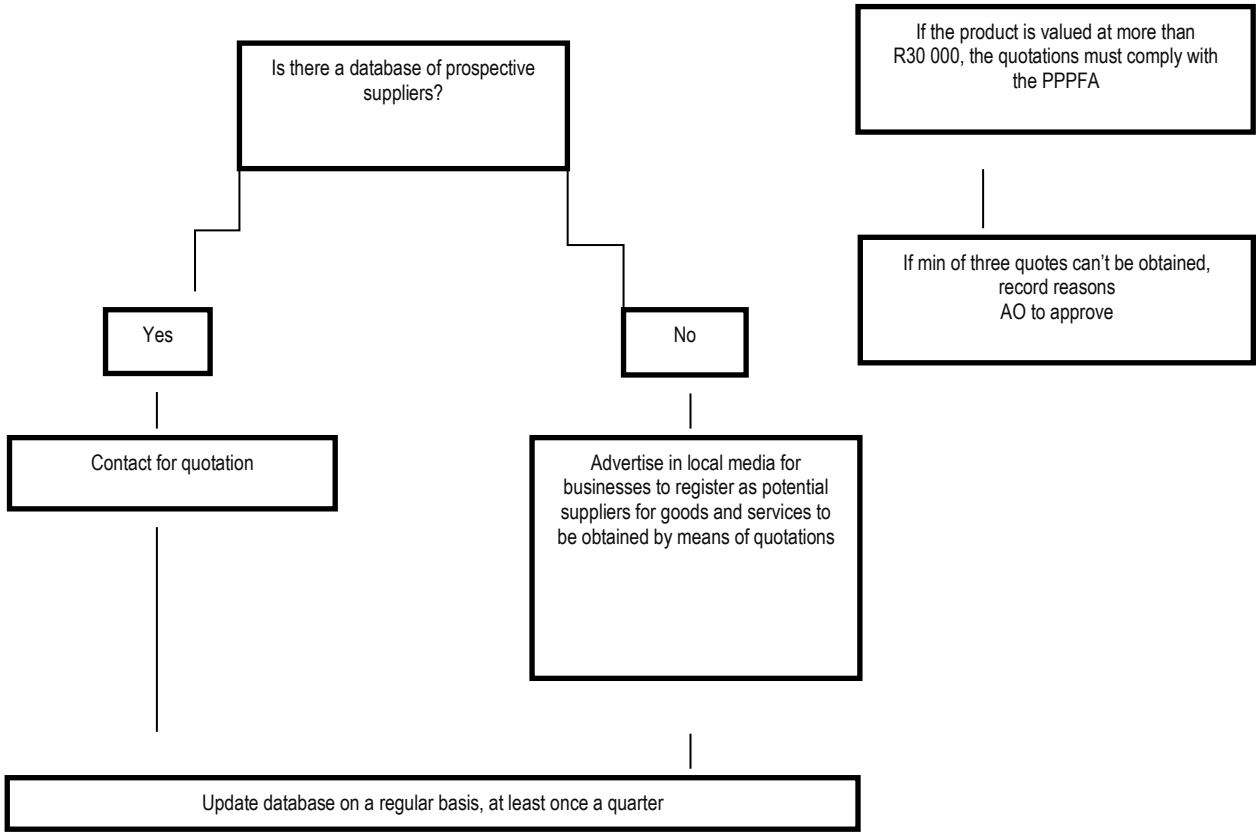
- The delegated authority assesses if the specific procurement process followed, is in line with the approved policy and procedures, that the evaluation is fair and sound, the deal is acceptable and in the Municipality's best interest, and then approves/rejects the recommendation.
- In the event of procuring goods, services and works of a complex nature, such matters maybe referred to the Bid Adjudication Committee to make the award
- The function must be carried out in line with the award functions stipulated under the roles and responsibilities section.
- Any decision regarding the adjudication and award of a contract is final.

OPERATIONAL

- The SCMU's representative must present the recommendation report of the relevant evaluation mechanism to the delegated authority for consideration and award.
- The queries and answers as well as the decision of the delegated authority must be recorded in writing and signed.
- Once approval has been granted, the SCMU may commence with the issuing of a purchase order or preparing the contract or other contractual documentation for the contractual commitment, if so required.
- Graphically the acquisition process for informal price quotations up to R 30 000 and informal bids up to R 200 000 can be depicted as per Figure 3.1.13.2 below.

Figure 3.1.13.2 Acquisition process for Price Quotations and informal Bids:





3.1.14 EVALUATION AND AWARD FOR PROCUREMENT ABOVE R200 000

3.1.14.1 **BID EVALUATION COMMITTEE FOR PROCUREMENT ABOVE R200 000**

POLICY

- Above R200 000, a Bid Evaluation Committee shall evaluate bids received and submit a recommendation regarding the award of the bids to the Bid Adjudication Committee.
- Bids are to be evaluated against the predetermined criteria in the bid document. The criteria to be taken into account, are *inter alia*:
  - (i) *Legal compliance and compliance with special conditions*
  - (ii) *Evaluation of specifications/terms of reference/functionality (within threshold values set).*
  - (iii) *Preferential procurement:*
    - *Price*
    - *B-BBEE certificates*
  - (iv) *Latent factors or other additional objective factors:*
    - *Capability/ability of the bidder to execute the contract*.
- National Industrial Participation Programme requirements.
- CIDBA requirements for infrastructure or construction procurement.

OPERATIONAL

- For tenders Above R200 000, a cross-functional Bid Evaluation Committee must be constituted by the AO.

- The Committee must over and above the SCM expertise and the representative of the user division, also represent the following skills:
  - *(i) Procurement expertise from the SCMU.*
  - *(ii) Sufficient financial expertise.*
  - *(iii) Sufficient technical expertise.*
  - *(iv) Sufficient legal expertise.*
  - *(v) Additional technical expertise as required may be co-opted.*

EVALUATION STEPS

- Each evaluator should check whether the information received from the SCMU is correct and ascertain him/herself of all the information and facts contained in each bidding document, this includes the prescribed preference points score sheet as well as compliance to SCM TR 43.
- Bid Evaluation Committee members shall:
  - *(i) Discuss the strengths, weaknesses and peculiarities of each offer.*
  - *(ii) Commence the discussions from the highest to the lowest point scorer.*
  - *(iii) Score the bids received according to pre-determined evaluation/adjudication criteria.*
- All discussions of each bid as well as the recommendation must be recorded in a recommendation report that must be signed off by all members of the Bid Evaluation Committee.
- In the case of professional services, offers are evaluated first on functionality and subject to achievement of the set threshold then on price as well as achievement of specified goals where applicable.
- The combined percentages for preferences and price equal 100%.
- Evaluations are not based on consensus decisions.
- Each evaluator scores each bid individually according to the predetermined criteria and weightings as reflected in the original bid documents.
- Calculated average points for service providers are used for evaluation purposes.
- The final recommendation report must be submitted to the Bid Adjudication Committee for consideration.
- Bidders shall not be allowed to amend their offers in any material manner, but may be requested to clarify any ambiguities and/or information that are unclear or illegible.

FORMAT OF THE RECOMMENDATION REPORT

- Recommendation/submissions to the Bid Adjudication Committee must be clear regarding the content and purpose of the matter for which consideration and approval is desired. The practice of submitting memoranda, reports, contracts, agreements, invoices and the like and requesting general approval is not acceptable. However, such documents may be forwarded as annexure supporting the request. Facts must be set out fully and clearly in the submission and reference must be made only to those portions of the attached documents, which are directly related to the approval being requested.
- Uniformity in respect of details where submissions deal with the recommendation of bids is essential. The following minimum information is required:
  - *(i) Name of the bidder*

(ii) *Price and whether the price is firm or not*

(iii) *Basis of delivery*

(iv) *Delivery period*

(v) *Trade mark*

(vi) *Country of origin*

(vii) *Preference claimed*

(viii) *Comparative price*

(ix) *In the case of single source bids, the previous purchase price must also be indicated where possible or other mechanism to determine reasonableness.*

- There must be a constant effort for uniformity in the sequence of categories in which bids are recommended if one bid contains more than one item for consideration, namely:

(i) *Only bid, price reasonable and in accordance with the specification.*

(ii) *Highest scorer and in accordance with the specification.*

(iii) *Highest scorer in accordance with the specification. (Higher scoring bids are passed over.) All higher scoring bids must be listed and the reasons for passing over must be furnished where bids are awarded on a point basis, any bids which scored a higher point, but are not recommended, must be listed and reasons for passing over must be furnished.*

(iv) *Highest scorer and acceptable although not strictly to specification.*

(v) *Highest acceptable scorer although not strictly to specification.*

- A discussion, which explains the recommendation, must always be provided where the recommendation is not self-explanatory in the light of the data already provided.
- The SCM Unit will provide the standard template for application.

INFORMATION THAT MUST BE SUPPLIED WITH RECOMMENDATIONS FOR THE AWARD OF BIDS

- The Bid Evaluation Committee must ensure that they are in possession of all relevant information so that accountable decisions can be taken. Since each case is unique, it is not possible to specify all the information, which must be supplied. However, the following points must be addressed when they arise:

(i) *Qualification of bidder's own conditions*

(ii) *When bidders do not withdraw conditions, which are unacceptable or conflicting, reasons must be provided for those conditions to be considered. When such conditions have financial implications or their withdrawal implies a second chance to bid, the facts must be pointed out to the Bid Adjudication Committee.*

(iii) *Small acceptable deviations - The Bid Evaluation Committee must be convinced that other bidders' competitiveness is not adversely affected by the acceptance of a bid, which is not strictly to specification.*

(iv) *Increase of prices before validity lapses - Such cases must be pointed out to the Bid Adjudication Committee so that it may decide what action to take against the bidder concerned.*

(v) *Increase of prices after validity lapses - This may be construed as an avoidable expenditure and must be reported to the AO. Therefore the Bid Adjudication Committee must be*

informed of the circumstances and the person/concern responsible for the delay.

(vi) *Reduction of prices before validity lapses - A reduction of prices and the effect thereof on the award of bids must be brought to the attention of the Bid Adjudication Committee. If the reduction in the price affects the recommendation, the reduction may not be considered. If it does not change the recommendation, it may be considered for implementation before the award.*

(vii) *Passing over higher scoring bids - Reasons for passing over higher scoring bids must be accountable and justifiable. For instance, it is not enough to indicate that the offer deviates from specification. It must be indicated what was specified, a description of the deviation must be given and the effect of the deviation on the use/operation of the item must also be pointed out. Where there are deviations in respect of several different properties, only the determinative deviations should be dealt with.*

(viii) *Reasonableness of prices - Where the reasonableness of prices cannot be substantiated or where the weighting of non-firm prices has an effect on the priority order of recommendations, all relevant information must be gathered and made available to the Bid Adjudication Committee.*

(ix) *Bids with a large number of items - Bids with a large number of items must not be delayed because of problems with a few individual items. The Bid Evaluation Committee must evaluate such items with problems at a later date.*

(x) *Sharing of contracts - If a contract has to be shared, full reasons for sharing must be supplied and the basis of the split must be provided as well as the conditions, which will apply.*

(xi) *Evaluation of samples - When an item is rejected because samples have been evaluated and do not measure up to the required standards, it must be pertinently stated in the recommendation that the product has been tested, which organization tested it and the details of the deviations and their effect on the use/operation of the product must be indicated.*

(xii) *Number of tender documents issued to prospective bidders - In order for the Bid Adjudication Committee to determine the competitiveness of the bidding process, the Municipality must keep record of the number of bid documents issued to prospective bidders as well as the number of bids received as a result of the invitation. This information must be pointed out in recommendations to the Bid Adjudication Committee.*

3.1.14.2 **AWARD STRUCTURE ABOVE R200 000**

Refer to SCM TR 29

POLICY

- The Bid Adjudication Committee shall consider and recommend the awarding of bids above the monetary value of R200 000 and up to R 10 million to the relevant delegated authority.
- The Bid Adjudication Committee shall consider and recommend the awarding of bids above the monetary value of R 10 million to the AO who will make the final award.
- The function must be carried out in line with the functions stipulated under the roles and responsibilities

section.

- The Bid Adjudication Committee assesses if the specific procurement process followed, is in line with the approved policy and procedures, that the evaluation is fair and sound, the deal is acceptable and in the Municipality's best interest, and then approves/rejects the recommendation or make a final recommendation to the AO for final award.
- Where the Bid Adjudication Committee finds that the recommendation is not correct or not in the Municipality's best interest, the reasons for not supporting the review is:
  i. Firstly returned to the Bid Evaluation Committee for reconsideration, then
  ii. Submitted to the AO for final award.
- Members of the Bid Evaluation Committee may present their reports to the Bid Adjudication Committee and clarify any uncertainties.
- The Bid Adjudication Committee and the AO has the power to amend or cancel concluded agreements if delivered goods and services do not conform to specifications.
- Any decision regarding the adjudication of a contract is final.

PRINCIPLES

- In the event that the AO makes an alternative decision than the recommendation submitted by the Bid Adjudication Committee after returning the matter back to the Bid Adjudication Committee for reconsideration, within 10 working days, the provisions of section 114 of the MFMA and SCM TR 29 will apply.

OPERATIONAL

- The Bid Adjudication Committee must carry out the adjudication and recommend the award of bids unless the recommendation is referred back to the Bid Evaluation Committee for justifiable reasons.
- The SCM Unit's representative must present the Bid Evaluation Committee's recommendation report to the Bid Adjudication Committee for consideration.
- Any queries and answers as well as the decision of the Bid Adjudication Committee must be recorded in writing and signed by the members.
- Where consensus cannot be reached between the members of the Bid Adjudication Committee, the matter must be referred to the AO for finalization.
- Once approval has been granted, the SCM Unit may commence preparing the contract or other contractual documentation.

3.1.15 CONSIDERATION OF ADDITIONAL INFORMATION

POLICY

3.1.15.1 Information received after the closing date, may only be taken into consideration if it would not influence the original recommendation made, which must be based on the original information received from providers.

3.1.15.2 During the consideration of quotations/bids, communication by the Municipality with providers may

take place only with the express prior approval of the relevant award structure.

PRINCIPLES

3.1.15.3 Should a discount for instance be offered, it could be taken into account when the contract has been awarded, but not beforehand.

3.1.15.4 The Municipality must communicate with providers where bid information is incomplete or the quotation/bid document is not completed in full, in order to obtain the necessary information.

3.1.15.5 Communication with bidders after the closing period but before the bid is awarded, must be done in an open and transparent manner. All bidders who submitted bid documents must be provided with the same communiqué.

3.1.15.6 During the period of time between the closing time of a bid and the date of notice of acceptance to the successful bidder, communication regarding matters in connection with the quotation/bid, between any official or a representative of a properly appointed testing organisation or a person acting in an advisory capacity for the Municipality and a member of the public, should take place only with the express prior approval of the relevant delegated authority.

3.1.16 CANCELLATION OF QUOTATIONS/BIDS

POLICY

3.1.16.1 Should it be determined through the evaluation process that no acceptable quotations/bids were received; a recommendation to cancel the quotation/bid must be submitted for approval as part of the evaluation report.

3.1.16.2 The reasons why no acceptable quotations/bids were received by the closing date and time must be investigated before a decision is made what alternative process must be followed to satisfy the requirements.

3.1.16.3 The requirement may be re-advertised / re-invited or a specific number of pre-identified service providers may be targeted. Cognizance should be taken with regards to the CIDBA pertaining to the re-advertising / re-inviting of bids.

3.1.16.4 The evaluation report must contain the request for cancellation accompanied by the perceived reasons determined through the investigation as well as a recommendation on the alternative process to be followed to satisfy the requirements.

3.1.16.5 The relevant delegated authority shall approve all cases where quotations/bids:

- *Are to be cancelled.*
- *New quotations/bids are to be solicited because of the cancellation.*
- *Negotiations with the preferred bidder are to take place to determine a reduction in the scope and/or a reallocation of risk and responsibility.*
- *A substantial reduction in the scope or modification to the bidding documents may require re-bidding.*

3.1.16.6 Where bids are to be cancelled all bidders must be informed in writing of the cancellation.

OPERATIONAL

3.1.16.7 Where the majority of quotations/bids do not comply with the specification requirements, or where a

weak reaction to the invitation can be ascribed to an unnecessarily restrictive specification, cancellation of the invitation should be considered.

3.1.16.8 Based on the reason to be determined for the receipt of unacceptable quotations/bids, a recommendation must then be made on which process will render a different result if quotations/bids are again sourced.

3.1.16.9 The possible reasons for receiving unacceptable quotations/bids may be the following:

- *Wrong choice of media for advertisement to reach the target audience in the case of advertised bids.*
- *Wrong group of potential providers targeted in the case of non-advertised bids.*
- *Terms of reference were not clear and specific.*
- *Quotations/bids submitted did not address the terms of reference as the latter was not understood or the providers were clearly inexperienced.*
- *The period allowed for the submission of quotations/bids was not sufficient for organizations to submit a sufficient quotation/bid or to submit quotations/bids at all.*

3.1.16.10 A recommendation may now be considered to either re-advertise/re-invite the quotation/bid or to target a specific number of pre-identified service providers.

3.1.16.11 Quotation/bidding documents should provide for the cancellation of all quotations/bids if and when necessary.

3.1.16.12(1) In the event that, in the application of the 80/20 preference point system as stipulated in the bid documents, all bids received exceed a value of R50 Million (VAT Incl.), the tender must be cancelled

(2) If one or more of the acceptable bids received are within the prescribed threshold of R50 Million, all bids received must be evaluated on the 80/20 preference point system.

(3) In the event that, in the application of the 90/10 preference point system as stipulated in the bid documents, all bids received are equal to, or below R50 Million, the bids must be cancelled.

(4) If one or more of the acceptable bids received are above the prescribed threshold of R50 Million, all bids received must be evaluated on the 90/10 preference point system

(5) Bids cancelled in terms of clauses (1) and (3) above, must be re-invited, with the correct preference point system clearly stipulated in the bid documents

(6) (1) The Accounting officer or Bid Adjudication Committee may, prior to the award of a bid, cancel the bid if:

a) Due to changed circumstances, there is no longer a need for the services, works or goods requested. ; or
b) Funds are no longer available to cover the total envisaged expenditure. ;
c) No acceptable bids are received; or
d) There is a material irregularity in the tender process.

(2) The decision to cancel a tender invitation in terms of subregulation (1) must be published in the same manner in which the original tender invitation was advertised.

(3) An organ of state may only with the prior approval of the relevant treasury cancel a tender for the second time.

3.1.17 DISCUSSIONS WITH BIDDERS

Refer to SCM TR 24

POLICY

3.1.17.1 Without the prior approval of the delegated authority no discussions may be conducted with any bidders regarding any aspect, which might in any way affect the prices, i.e. which may change the order in which quotes/bids will be ranked.

3.1.17.2 Where such discussions are authorised, the delegated authority must ensure that the discussions take place at least at the middle management level and that the outcome of such discussions, must be placed on record in writing and comply with the provisions of SCM TR 24.

3.1.18 PREFERENTIAL PROCUREMENT

3.1.18.1 **Preference point system**

Refer to provisions of the PPPFA, its Regulations and the Municipal PPPFA Policy

POLICY

- The application of preferential procurement and broad based black economic empowerment must be consistent with:
  - (i) The Preferential Procurement Policy Framework Act and its Regulations.
  - (ii) The Broad Based Black Economic Empowerment Act.
- The Municipality shall set itself a target that it wishes to achieve through preferential procurement, preferably through the adoption of a Municipal Preferential Procurement Policy as provided for in section 2 of the PPPFA.
- The Municipality shall stipulate the preference point system in bid documents to be applied in adjudication.
- No system has to be applied in respect of acquisitioning with a Rand value of less than R30 000 per case.
- The relevant preference point formula as per the PPPFA must be used to calculate the points for price in respect of acquisitioning with a Rand value equal to, or above R30 000.
- The maximum score must be allocated to the lowest priced acceptable bid/quote. Any other acceptable quotations/bids, which are higher in price, must score fewer points on a *pro rata* basis, calculated on their prices in relation to the lowest acceptable quotation/bid in accordance with a prescribed formula.
- The contract must be awarded to the bidder who scores the highest points unless objective criteria in addition to that pertaining to specific goals justify the award to another bidder.

PRINCIPLES

- In the acquisitioning of local goods and services or sale and letting of assets, categories of preference shall be used in the allocation of contracts and the protection or advancement of persons or categories of persons, disadvantaged by unfair discrimination.
- Bids must include criteria for the evaluation of quotations/bids to identify the quotation/bid that represents the best value for money.

OPERATIONAL

- The 80/20 preference points formula must be used to calculate the points for only price in respect of acquisitioning with a Rand value above R30 000, and up to a Rand value of R50 000 000 with a maximum number points for price of 80.
- The 90/10 preference points formula must be used to calculate the points for only price in respect of acquisitioning with a Rand value above R50 000 000 in terms of legislation with a maximum number points for price of 90.
- A maximum of 20 or 10 points must be allocated for equity ownership according to the stipulations in the regulations.
- Any other acceptable quotations/bids, which are higher in price, must score fewer points on a pro rata basis, calculated on their prices in relation to the lowest acceptable quotation/bid in accordance with a prescribed formula.
- Points must be awarded to a bidder for attaining the B-BBEE status level of contributor in accordance with the table below and added to the points scored for price.

B-BBEE status level of contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-Compliant contributor	0	0

3.1.18.2 **Broad Based Black Economic Empowerment Status Level Certificate**

POLICY

- B-BBEE status level attained by bidder must be used to determine the number of points scored out of 10 or 20 by a bidder for B-BBEE contribution.

OPERATIONAL

- Verification Certificates (indicating B-BBEE Status Level of contributor) that are issued in terms of the

B-BBEE Codes of Good Practice will be used to calculate points out of 10 or 20.

- Bidders with annual turnovers of less than or equal to R10 million qualify as Exempted Micro Enterprises in terms of the B-BBEE Act and must submit a certificate issued by a registered Auditor, Accounting Officer (as defined in section 60(4) of the Close Corporation Act, 1984 (Act no. 69 of 1984)) or an accredited verification agency. They automatically qualify as a level 3 or 4 B-BBEE status level.
- Bidders other than EME's must submit a valid or certified copy of their B-BBEE status level verification certificate, substantiating their B-BBEE rating.

3.1.18.3 **Local production and content**

Refer to PPPFA Regulation 9(1), Municipal PPPFA policy and relevant NT and DTI circulars

POLICY

- In the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with stipulated minimum threshold for local production and content will be considered.
- Designated sectors have been identified as being:
  (i) *Textile, clothing, leather and footwear*
  (ii) *Steel and power pylons*
  (iii) *Rolling stocks*
  (iv) *Canned/processed vegetables*
  (v) *Buses (bus body)*
- Specifications of stipulated minimum threshold percentages and requirements for local production and content must be provided for the Municipal PPPFA Policy.
- The AO must stipulate in bid invitations that the exchange rated to be used for the calculation of local production and content must be the exchange rate published by the SARB at 12:00 on the date of advertisement of the bid.
- Only the South African Bureau of Standards approved technical specification number SATS 1286:2011 must be used to calculate local content.
- The AO must stipulate in the bid documentation that:
  (i) *The Declaration Certificate for Local Production and Content (MBD 6.2) together with the Annex C (Local Content Declaration: Summary Schedule) must be complete, duly signed and submitted by the bidder at the closing date and time of the bid; and*
  (ii) *The rates of exchange quoted by the bidder 4.1 of the Declaration Certificate will be verified for accuracy.*

PRINCIPLES

- Management must ensure that reasonable or market related prices are secured for, taking into account factors such as benchmark prices, value of money and economies of scale. The AO may approach the DTI to assist, where possible, with benchmark prices that have been designated for local production and content.

- A two stage evaluation process may be followed to evaluate the bids received -:

  Stage 1: Evaluation in terms of stipulated minimum threshold for local production and content

  The declarations made by the bidder in the MBD 6.2 forms and Annex C must be used for this purpose. If the bid is for more than one product, the local content percentages for each product contained in Declaration C must be used. No amendments of the stipulated minimum threshold for local production and content are allowed. The Accounting Officer is responsible to ensure that required bid documentation are submitted and he/she must also verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of the Declaration Certificate for Local Content (MBD 6.2)

  Stage 2: Evaluation in terms of the 80/20 or 90/10 preference point systems (refer to paragraph 17.4.15) - *The Accounting Officer must ensure that contracts are awarded at prices that are market related taking into account, among others, benchmark prices, value for money and economies of scale.*

- Prices may be negotiated with short listed or preferred bidders. Such negotiations must not prejudice any other bidders.

OPERATIONAL

- With the invitation of bids, the local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the following formula which must be disclosed in the bid documentation:

  LC – (1-x/y)*100

  Where x is the imported content in Rand (converted to Rand using the exchange rate published by the SARB at 12:00 on the date of advertisement of the bid) and y is the bid price in Rand excluding VAT.

- After awarding bids, the DTI must be notified of all successful bidders and the value of the contracts. Copies of the contracts, MBD 6.2 Certificates together with the Declaration C must be submitted to the DTI. The DTI has the right to, as and when necessary, request for auditors certificates confirming the authenticity of the declarations made in respect of local content.

3.1.18.4 **Application of preferences**

POLICY

- Preference calculations or decisions, made during evaluations, shall be clear and documented.
- Including when appointing consultants, the point's allocation for price may only be for price and not functionality, which should be clearly stipulated in the TOR. This is in adherence to the PPPFA Regulations that functionality should be separately evaluated and scored.
- If all bids received, exceed the estimated Rand value linked to the preference point system applied, the bid invitation must be cancelled and re-invited stating the correct preference point system.

PRINCIPLES

- Critical factors (criteria) are the essential characteristics that the offer pertaining to the goods/services/works must possess. If an offer does not satisfy any of the critical factors (criteria), then it can immediately be rejected. This can also be referred to as minimum requirements or specification.
- Functionality on the other hand provides for factors that, when scored, compares the capacity and

ability of each bid to successfully complete a contract. Functionality must be identified, together with its scoring, weights as well as the minimum threshold, as provided for in the PPPFA Regulations. Non-adherence to functionality does not mean a bid is non-responsive, the bidder will just receive a '0' at the scoring column.

- Specific preference goals must not be confused with critical factors. If a critical factor (special condition) is set which is inclusive of a preferential goal, care must be taken that it is not also set as a preference goal as it may be regarded as double preference or double discrimination being granted. Preferential goals must form part of the Municipal PPPFA Policy and becomes a special condition of tender.

3.1.18.5 **VERIFYING PREFERENCES**

SCM TR 43, PPPFA and PPPFA Regulations, 2011

POLICY

- Verification is required whenever it is clear that the claimed preference is incorrect or when reasonable doubt exists that the bidder is entitled to the preference in any way at all.

PRINCIPLES

- Where, as a result of a query, there is a change in the percentage preference claimed which affects the ranking of quotations/bids for award, a motivated recommendation must be submitted to the relevant delegated authority for consideration.

3.1.18.6 **AMENDMENT OF PRICES PRIOR TO LAPSE OF VALIDITY**

POLICY

- An amendment of a quoted price during the validity period is not allowed.

3.1.18.7 **EXTENSION OF VALIDITY PERIOD**

POLICY

- Extension of validity must be finalised while the quotations/bids are still valid.
- If a bidder should reduce his quoted price as a result hereof, the reduction may be considered only if the provider would have been the successful contractor irrespective of the reduction. In other words, the case is evaluated at the original quoted price and if successful, it is accepted at the reduced price.
- In cases where the quoted price is increased when the validity period expires and the quotation/bid concerned is either no longer recommended for acceptance or is recommended for acceptance at the higher price, the disadvantageous or incremental costs must be reported to the delegated authority.

OPERATIONAL

- When validity lapses, the contractual obligation, which the provider accepted on signing the invitation to bid, falls away.
- Changed circumstances, for which no provision is made in the bid, can occur and bidder's conditions, of which price may be one, can be affected. Bidders may, therefore, wish to make changes when

extending their validity periods.

- When validity period extensions are requested, bidders must be asked to confirm such extension subject to the same price, terms and conditions or to indicate the nature of and reasons for any amendments.
- The extension of the validity periods of quotations/bids is discouraged because it can result in amendments to quotations/bids to the disadvantage of the Municipality.

3.1.18.8 **NEW AND UNPROVEN PRODUCTS**

POLICY

- A bid may not be rejected summarily simply because the bidder or the product which he offers is unknown

OPERATIONAL

- If a brand which qualifies for acceptance is new and unknown to the Municipality or unproven after consultation with users, if applicable, consideration must be given to recommending to the Bid Adjudication Committee that initially only minimum requirements from the bidder concerned should be bought so that it may be tested and evaluated thoroughly in practice, if feasible.
- In such cases the fact that it is a new, unknown or unproven brand must be clearly indicated in the recommendation to the Bid Adjudication Committee.
- Feedback regarding test results must be given to the suppliers.
- Should the requirement be for only one item, a new/unknown product should usually only be accepted if the user has satisfied itself of the acceptability of the product.
- A distinction should be drawn between new and unknown products and products which must be manufactured specially.
- Where bids for specially manufactured products are recommended and accepted, steps must be taken to ensure that the products are subjected to the necessary inspection and testing.

3.1.18.9 **COUNTRY OF ORIGIN**

POLICY

- There is currently no embargo on the purchase of products from any foreign market, subject to the PPPFA provisions related to local content and the proudly South-Africa principles.

OPERATIONAL

- The Municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:
  - (i) Firstly: Suppliers and businesses within the Municipality or district;
  - (ii) Secondly: Suppliers and businesses within the relevant Province;
  - (iii) Thirdly: Suppliers and businesses within the Republic of South Africa.
- The quality of products, which are imported, particularly of unknown or new products, is not always known. Therefore the country of origin, trademark and model must always be stated in submissions to the Bid Adjudication Committee.
- Where a new or unknown product is recommended, action must be taken in accordance with the

discussion in paragraph 3.1.18.8 above.

3.1.18.10 **DEVIATIONS FROM SPECIFICATION**

POLICY

- Quotations/bids with acceptable deviations from specification may be recommended for acceptance, provided that the competitiveness of another provider is not adversely affected and the deviation is not regarded as a material defect.

OPERATIONAL

- Where the difference in tender price between the tender with acceptable deviations from specification and the lowest tender strictly to specification is small, a recommendation should be made to the Bid Adjudication Committee that the latter tender should be accepted as an alternative. In such a case, the department concerned should indicate that it can carry the additional cost.
- Where the majority of tenders do not comply with the specification requirements, or where a weak reaction to the tender invitation can be ascribed to an unnecessarily restrictive specification, cancellation of the tender invitation should be considered. The specification should then be reviewed and suitably amended so that fresh, more competitive tenders may be invited.

3.1.18.11 **ALTERNATIVE OFFERS**

POLICY

- Regardless of whether the provider also submits offers conforming strictly to specification, alternative offers may be considered and accepted provided that the other providers are not prejudiced and alternative offers are not expressly excluded in the tender documentation.
- If the alternative offer does not meet the specification requirements, in that it is lower than the specified requirements and the deviations are acceptable, the other providers must be approached in cases where they might possibly be prejudiced, with a view to obtaining offers for the delivery of a product or service with the same or similar acceptable deviations.
- Such cases must be submitted to the relevant Bid Adjudication Committee for consideration and the relevant delegated authority for approval.

3.1.18.12 **IMPROVEMENT OF SPECIFICATION**

POLICY

- A quotation/bid received which offers an improvement on the specification may be accepted provided that the other providers are not prejudiced.

PRINCIPLES

- A quotation/bid which is the highest scorer and which represents an improvement on the requirements of the specification may be recommended for acceptance.
- A quotation/bid which is not the highest scorer and which represents an improvement on the requirements of the specification may be recommended for acceptance by the relevant Bid Evaluation

Committee provided that all competitive providers are approached beforehand but are not able to offer such an improved product at a lower price.

- Each case is considered on its merits but it can be accepted as a general guideline that such an improvement must exceed the specified minimum requirements. The reason why the improvement is deemed to be an absolute necessity must be motivated and the additional costs must be justifiable.
- If the improvement can be regarded as a unique property of the particular product, the case is regarded as a significant amendment of the specification and an explanation must be provided of why these unique properties are essential and the reasonableness of the price will have to be substantiated.
- It must also be motivated why it would not be better to cancel and re-invite the bid.

3.1.18.13 **EQUAL OFFERS**

POLICY

- If functionality is part of the evaluation process and two or more bidders have scored equal points including equal points for B-BBEE and price, the successful bidder must be the one scoring the highest score for functionality.
- In the event that two or more tenders have scored equal total points, the successful tender must be the one scoring the highest number of preference points for specified B-BBEE.
- Should two or more offers still be equal in all respects, the award shall be decided by the drawing of lots in accordance with the delegated powers.
- Where bid prices for a portion of a series of sub-items are equal and it is necessary for these items to be obtained from the same bidder, then the lowest overall bid may be recommended for acceptance.

3.1.18.14 **ADDITIONAL QUANTITIES**

MFMA section 116 and NT MFMA CIRCULAR 62 of 2012

POLICY

- Before an award has been made, additional quantities may be accepted up to the maximum of 20 % and if it does not affect the preference goal of 80/20 or 90/10.
- All providers concerned must be approached for offers for the larger quantities.
- Where the additional quantities are more than 20%, a fresh or a supplementary bid must be invited, unless the provisions of MFMA section 116 and NT MFMA Circular 62 of 2012 has been complied with.

OPERATIONAL

- If, after closing of a quotation/bid but before an award has been made, a need arises for additional quantities up to the maximum of 20%, the recommended provider may, with prior approval of the relevant delegated authority be approached to determine whether he/she is prepared to deliver the additional quantities at a reduced price, or if not, at the quoted price provided that the delegated powers are not exceeded.
- However, the prices of marginally higher quotations/bids must also be taken into account and the providers concerned must also be approached for offers for the larger quantities.

3.1.18.15 **SAMPLES**

POLICY

- Notwithstanding the requirement that samples must be submitted not later than the date and time specified in the bidding documents, samples may be received up to the time that they are required for evaluation. The recommendation of a bid must, however, not be delayed because a sample, which was received late, still has to be evaluated.

OPERATIONAL

- If samples have not been received by evaluation time, the bid must be evaluated as if no sample was submitted.
- The Bid Adjudication Committee must then be informed that the product has been rejected because no sample was received.
- A bidder who has neglected to submit a sample must not be asked for it unless the other bids are not acceptable on the grounds of quality or price, or the bidder concerned has offered a product manufactured in South Africa in competition with imported products.
- However, if other, acceptable South African manufactured products are offered by bidders who have submitted samples, the bidder who did not submit samples must not be asked to submit samples unless the Bid Adjudication Committee directs otherwise.
- The relevant circumstances must be pointed out to the Bid Adjudication Committee.
- The above-mentioned stipulations in regard to samples are mutatis mutandis applicable to pamphlets, illustrations, certificates, etc. in cases where it is a bid condition that they must be submitted together with the bids.
- If the testing of samples is delayed by the SABS or other relevant testing organisation, a bidder should be allowed to submit a letter issued by the testing organization to that effect so as not to declare the bid invalid due to the non-submission of samples.
- Should the bid conditions call for an SABS certificate to be submitted, such certificates may be accepted until such a time that the recommendation has to be formulated.
- The evaluation and award process must not be delayed for this purpose.

NOTE: Should it be a requirement that samples must be submitted, no bidder must be requested to submit samples after the closing of the bid, unless all of the higher bids are not acceptable on the grounds of non-compliance of the specification or price.

3.1.18.16 **COMPARISON OF QUOTED PRICES**

POLICY

- The quoted prices of all items must be brought to a comparative basis, where applicable, by deducting preferences and other benefits, and adding implied contract price adjustments in the case of non-firm prices and delivery and other costs where applicable.

3.1.18.17 **COMPARATIVE PRICES: BIDS FOR CONTRACTS WITH A DURATION OF MORE THAN ONE**

YEAR

POLICY

- Where bids for contracts with a duration period of more than one year are received, comparative prices, where necessary, must be calculated on the basis of the discounted net present values of the various offers.
- A specific escalation rate determined by the market factors should form part of the bid.
- This rate will then be used to calculate the tariffs for each of the future years.

OPERATIONAL

- Examples of cases where this directive pertaining to discounted present values must be applied, are the following:

(i) Rental contracts for office accommodation.

(ii) Rental contracts for computer and other electronic equipment.

(iii) Maintenance contracts for elevators and other electrical and mechanical equipment with a long useful life.

3.1.18.18 **CONFIDENTIALITY**

POLICY

- After the public opening of bids, information relating to the evaluation process may not be disclosed to interested parties or other persons not officially concerned with the process, until the successful or preferred bidder is notified of the award.

3.1.18.19 **SUBCONTRACTING AND JOINT VENTURES**

POLICY

- It is incumbent upon the Municipality to take care that:
  (i) Subcontractors and partners in joint ventures are engaged in fair and reasonable conditions of contract.
  (ii) Contractors who contravene the contract conditions potentially be designated as restricted persons.
  (iii) Secured payment options may only be considered where it can be justified.
- The Municipality does not accept any liability for the services rendered or goods provided by sub-contractors.
- In the event that a bidder wishes to sub-contract more than 25% of the value of the contract, such bidder must adhere to the provisions of the PPPFA Regulations 11(8) and (9).
- Where bidders submit tenders as a Consortium or Joint Venture the contract that will guide the relationship must be attached to the tender documentation and a separate B-BBEE –certificate for that specific Consortium or Joint Venture must be submitted

OPERATIONAL

- A bidder must not be awarded the points for the B-BBEE status level of contribution if it is indicated in the bid document that such a bidder intents sub-contracting more than 25 % of the contract value to any other enterprise that does not qualify for at least the same number of the points that the

bidder qualifies for unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

- A contractor is not allowed to sub-contract more than 25 % of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended is an EME that has the capability and ability to execute the sub-contract.
- In relation to a designated sector, a contractor must not be allowed to subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- The minimum requirements of the contract that will guide the relationship between Consortium partners or Joint Ventures must include but not be limited to the following:

"An agreement of intent to establish a consortium/joint venture must be included in the proposal, covering the following headings:

1. ***P R E A M B L E***
2. ***INTERPRETATION***
3. ***KEY DELIVERABLES OF THIS AGREEMENT***
4. ***OBLIGATIONS PER CONSORTIUM MEMBER AND LEADING CONTRACTOR***
5. ***DURATION***
6. ***SOFTWARE AND EQUIPMENT***
7. ***PATENTS, TRADE MARKS, SOURCE CODE MANAGEMENT AND COPYRIGHTS***
8. ***SKILLS TRANSFER, CAPACITY BUILDING AND TRAINING***
9. ***SUBCONTRACTORS***
10. ***GUIDING PRINCIPLES FOR OTHER SERVICES RENDERED TO CLIENT, INCLUDING AD-HOC SERVICES***
11. ***REPORTING ARRANGEMENTS***
12. ***CONSORTIUM GOVERNANCE ARRANGEMENTS (including % of profit / liability sharing of each partner)***
13. ***SET-OUT PHASE AND PHASED PROGRESSION OF B-BBEE PARTNERS***
14. ***FINANCIAL ARRANGEMENTS***
15. ***WARRANTY***
16. ***BREACH***
17. ***LIABILITY***
18. ***FORCE MAJEURE***
19. ***CONFIDENTIALITY***
20. ***CO-OPERATION***
21. ***GOOD FAITH***
22. ***ARBITRATION***
23. ***NOTICES AND DOMICILIA***
24. ***GENERAL***
25. ***COSTS***

3.1.19 CLEARANCE OF PROVIDERS PRIOR TO THE AWARD OF A CONTRACT

3.1.19.1 **RESTRICTED PERSONS**

Refer to section 114 of the MFMA and SCM TR 29

POLICY

- The Municipality must check the National Treasury and CIDBA, where relevant, database prior to awarding any contract to ensure that no recommended bidder, nor any of its directors, is listed as companies, directors or persons prohibited from doing business with the public sector.
- This list of restricted persons is managed and maintained by the Office of SCM within the National Treasury.

PART 3.2: ACQUISITION MANAGEMENT PROCESS

3.2.1 RANGE OF PROCUREMENT PROCESSES AND THRESHOLDS

Refer to SCM TR 12

POLICY

3.2.1.1 Promote the principles of being fair, equitable, transparent, competitive and cost-effective through all procurement processes.

3.2.1.2 Subdivision of requirements to circumvent the Accounting Officer's delegated powers will not be tolerated.

3.2.1.3 The Accounting Officer may, in writing:

- Lower but not increase, the different threshold values
- Direct that:

(i) *Petty cash processes be obtained for any specific procurement of a transaction value lower than* R300*;*

(ii) *Verbal quotations be obtained for any specific procurement of a transaction value between* R301 – R2000 of which the quotation of the successful bidder must be in writing

(iii) written price quotations be obtained for any specific procurement of a transaction value between R2 001 – R30 000;

(iv) Formal written price quotations be obtained for any specific procurement of a transaction value between R30 001 – R 200 000; or

(v) *A competitive bidding process be followed for any specific procurement of a transaction value higher than R200 000 and the procurement of long term contracts (excluding normal rental/lease agreements regarding office equipment, IT equipment and software to a maximum of R200 000 over a three year period).*

3.2.1.4 Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the Policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

3.2.2 PETTY CASH TRANSACTIONS UP TO R300

Refer to SCM TR 15

POLICY

3.2.2.1 Within the petty cash monetary threshold, up to R300, satisfy the requirement according to the prescribed petty cash policy.

3.2.2.2 The Municipality shall ensure that a petty cash policy and procedures are in place.

3.2.2.3 The petty cash policy must stipulate for which items and under which circumstances petty cash may not be utilized.

3.2.2.4 The petty cash procedure may not be used for items available on contract.

OPERATIONAL

3.2.2.5 The Expenditure unit in the Office of the CFO must develop and maintain a petty cash policy and SOP.

3.2.2.6 In accordance with the petty cash policy, the Municipality may procure supplies without inviting price quotations or bids. The intention of petty cash is to facilitate the smooth running of the office with the least administration and where quotations cannot be practically obtained.

3.2.2.7 The following conditions apply to petty cash:

- The thresholds, up to R2 000, indicated in the petty cash policy for the daily float as well as the transaction value of R300 shall be strictly adhered to.
- Cash purchases shall only be made against available funds.
- All transactions must be recorded and documentary evidence must be submitted. Proof of payments will be a cash register slip or receipt, and not the invoice, unless the invoice has been endorsed with proof of payment.
- Should the value of a transaction exceed the prescribed transaction value, the petty cash procedure may not be used.
- Subdivision of requirements to circumvent the required procurement processes will not be tolerated.

3.2.2.8 The standard operating procedure to be followed for a petty cash transaction must be as prescribed by the Expenditure unit

3.2.2.9 The conditions for the procurement of goods by means of petty cash purchasers are as follows:

- Terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager
- The maximum number of petty cash purchaser of the maximum amounts per month for each manager
- Any types of expenditure from petty cash purchases that are excluded, where this is considered necessary;
- A monthly reconciliation report from each manager must be provided to the CFO, including:
    (i) The total amount of petty cash purchases for that month; and
    (ii) Receipts and appropriate documents for each purchase

3.2.3 WRITTEN OR VERBAL QUOTATIONS

R300 - R2 000

POLICY

3.2.3.1) All written and verbal quotations are to be obtained by the procurement section of the SCMU

3.2.3.2) Obtain at least three written or verbal quotations

3.2.3.3) If it is not possible to obtain at least three quotations, the reason must be recorded and approved by the AO or the delegated authority

3.2.3.4) In the event of quotations obtained by other officials, the procurement officials must verify that the suppliers are registered on the supplier database and if not such supplier adheres to the listing requirements

3.2.3.5) No quotations must be obtained or accepted from supplier not registered on the supplier database or whom does not at least adhere to the listing requirements

OPERATIONAL

3.2.3.6) At least 3 quotations must be obtained, where applicable, from the list of prospective providers per commodity

3.2.3.7) Requisitions for the obtainment of verbal or written quotations must be obtained through the official procurement system

3.2.3.8) Where verbal quotations are obtained the quotation of the preferred supplier must be confirmed in writing.

3.2.3.9) Witten quotations must clearly indicate the name of the bidder, requisition no for which the quote is applicable to, validity period of the quote

3.2.3 WRITTEN PRICE QUOTATIONS

Above R2 000 and less than R30 000

Refer to SCM TR 16

POLICY

3.2.3.1 Requirements may be procured without inviting competitive bids or formal written quotations.

3.2.3.2 Obtain at least 3 written quotations from the list of prospective providers, where applicable.

3.2.3.3 Where no suitable providers are available from the list, quotations may be obtained from other possible providers not on the list, provided that they adhere to the listing criteria as stipulated in this policy

3.2.3.4 If it is not possible to obtain at least three quotations, the reason must be recorded and approved by the AO or the delegated authority.

OPERATIONAL

3.2.3.5 At least 3 quotations must be obtained, where applicable, from the list of prospective providers per

commodity..

3.2.3.6 Where no suitable providers are available from the list, other possible providers not on the list may be contacted to solicit quotations from, provided that they adhere to the listing criteria stipulated in the policy. The intention is still to endeavor to obtain at least 3 quotations.

3.2.3.7 If it is not possible to obtain at least 3 quotations, the reasons must be recorded and approved by the AO or the delegated authority.

3.2.3.8 The AO must record the names of the potential providers requested to provide such quotations with their quoted prices.

3.2.4 FORMAL WRITTEN PRICE QUOTATIONS

Above R30 000 and less than R200 000

Refer to SCM TR 17& 18

POLICY

3.2.4.1 Requirements may be procured by inviting written quotations from as many as possible providers on the prospective provider list.

3.2.4.2 Requirements for bids above R 30 000 and up to R 200 000 must be advertised for at least 7 days on the website and an official notice board of the Municipality and deposited in the bid box specified by the specified time on the due date accompanied by a valid tax clearance certificate issued by SARS.

3.2.4.3 Where no suitable providers are available from the list, quotations may be obtained from other possible providers not on the list, provided that they adhere to the listing criteria as stipulated in this policy.

3.2.4.4 If it is not possible to receive at least 3 quotations, the reasons should be recorded and approved by the CFO or the delegated authority.

3.2.4.5 The AO must record the names of the potential providers and their written quotations

3.2.4.6 A designated official must within 3 days of the end of each month report to the CFO on any approvals given during that month by that official.

3.2.4.7 The Municipality may apply the prescripts of the PPPFA for procurement in this category. This is however not compulsory.

PRINCIPLES

3.2.4.8 If deemed necessary, the AO or delegated authority may apply the prescripts of the PPPFA and its Regulations for procurement in this category. This is however not compulsory.

3.2.4.9 If it is not possible to obtain at least 3 quotations, the reasons should be recorded and approved by the AO or the delegated authority.

OPERATIONAL

3.2.4.10 Only the SCMU must invite quotations in writing from as many providers as possible that are registered on the list of prospective providers in the relevant category. If there are too many providers on the list for the specific commodity, the SCMU will invite quotations from at least three

(3) providers at a time and apply the rotation principle.

3.2.4.11 The request for quotations shall indicate the closing date and time, the address where it must be submitted, the validity period and the address where the supplies must be delivered or the services must be rendered.

3.2.4.12 The prescripts of the PPPFA and its Regulations must be applied.

3.2.4.13 Quotations received in relation to this process must be submitted to the Bid Evaluation Committee as well as the Bid Adjudication Committee, if so directed by the AO or delegated authority.

3.2.4.14 It may also include special conditions of contract if required over and above the normal conditions.

3.2.4.15 Where no suitable providers are available from the list, other possible providers not on the list may be contacted to solicit quotations from, provided that they adhere to the listing criteria stipulated in this policy. The intention is still to endeavor to obtain at least 3 quotations where possible.

3.2.5 RANGE OF PROCUREMENT PROCESSES ABOVE R200 000

POLICY

3.2.5.1 A competitive bidding process shall be followed as far as possible.

3.2.5.2 If, in a specific case it is impracticable to invite competitive bids, the Municipality may procure the required goods or services by other means such as through limited bidding, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the Accounting Officer or delegated authority prior to the award and promptly reported to the SCM Unit.

3.2.5.3 The Municipality may include an open and transparent, competitive pre-qualification bidding process in which only pre-qualified organisations may participate.

3.2.5.4 The prescripts of the PPPFA shall be adhered to.

3.2.5.5 Subdivision of requirements to circumvent the AO's delegated powers will not be tolerated.

OPERATIONAL

3.2.5.6 The range of procurement processes are divided mainly in the following two major categories:

(i) Competitive bidding.

(ii) Deviations.

(iii) Term contracts.

3.2.5.7 There is a hierarchy of options within this category that shall be considered as part of determining the sourcing strategy and the procurement process during the demand management and acquisition management phases. Each option will indicate under which circumstances it is recommended for utilisation. The first option in the hierarchy affords the greatest opportunity for competitiveness and the promotion of preferential procurement.

3.2.5.8 Circumstances however, do occur, which make the use of the open bidding process, impracticable, impossible or very cumbersome. The utilization of subsequent options offers less opportunity for competition and promotion of preferential procurement and therefore requires proper justification for utilization in the determining of the procurement processes. These processes are further explained hereunder.

3.2.6 COMPETITIVE BIDDING

Refer to SCM TR 19-20

POLICY

3.2.6.1 Competitive open bidding shall be applied as first preference.

3.2.6.2 Bids shall be advertised in appropriate media to reach the target market (including the *Government Tender Bulletin* if appropriate), should the AO or the delegated authority deem it necessary.

PRINCIPLES

3.2.6.3 Bid documentation will be prepared by SCM practitioners in consultation with the relevant directorate and displayed on notice boards, placed on the Council's website, and advertised in commonly circulated local and/or provincial newspapers with a closing date of at least 14 days after the date that the advertisement first appears.

3.2.6.4 No requirement for goods or services above an estimated transaction value of R200 000 may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

OPERATIONAL

3.2.6.5 Competitive bidding is where open competition exists and the requirement is advertised timely for all prospective bidders to participate and therefore allowing unfettered competition.

3.2.6.6 Stages of competitive bidding process:

- Compile bid documentation;
- Publicly invite bids;
- Hold site meetings or briefing sessions;
- Handle bids submitted in response to public invitation;
- Evaluate bids;
- Award contract;
- Administer contract (after approval of bid the AO and bidder must enter into a written agreement);
- Proper record keeping (original/legal copies of written contracts agreements should be kept in a secure place for reference purposes).
- Competitive bidding may also include:
- Two-stage bidding.
- Pre-qualifying bidders.
- Establishment of a list of approved providers.

3.2.7 TWO-STAGE BIDDING

POLICY

3.2.7.1 A two-stage bidding process is allowed for:

(i) Large complex projects;

(ii) Projects where it may be undesirable to prepare complete detailed technical specifications; or

(iii) Long term projects with a duration period exceeding three years.

PRINCIPLES

3.2.7.2 Subject to prior approval by the AO or delegated authority, the Municipality may engage in procurement by means of two-stage bidding, or request for proposals, in the following circumstances:

(i) If it is not feasible for the Municipality to formulate detailed specifications for the goods or construction or, in the case of services, to identify their characteristics and, in order to obtain the most satisfactory solution to its procurement needs.

(ii) If it seeks bids, proposals or offers as to various possible means of meeting its needs.

(iii) When the Municipality seeks to enter into a contract for the purpose of research or study.

OPERATIONAL

3.2.7.3 Normally the invitation to bid for major contracts is preceded by a detailed design and engineering of the goods, services and works to be provided, including the preparation of technical specifications and other bidding documents. However, in the case of turnkey contracts or contracts for large complex plants or works of a special nature, it may be undesirable or impractical to prepare complete technical specifications in advance. In such a case, a two-stage bidding procedure may be used, under which first un-priced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents and the submission of final technical proposals and priced bids in the second stage.

3.2.7.4 These procedures are also appropriate in the procurement of equipment, which is subject to rapid technological advances, such as major computer and communications systems.

3.2.7.5 The method of evaluation, including the allocation of points, must be clearly specified in the bidding documents.

3.2.7.6 Further directives in this regard may be issued by the relevant Treasury or the SCM Unit.

3.2.7.7 Evaluation of Two- stage bidding:

- First functionality must be assessed and then in accordance with the Preference Points System prescribed in Preferential Procurement Regulations.

(i) First stage evaluation of functionality:

- Evaluate bids in terms of the evaluation criteria embodied in the bid documents. Amendment of evaluation criteria, weights, applicable values and/or the minimum qualifying score for functionality after the closure of bids is not allowed as this may jeopardize the fairness of the process.
- Consider a bid if it achieves the prescribed minimum qualifying score for functionality.
- Bids that fail to achieve the minimum qualifying score for functionality must be disqualified.
- Score sheets should be prepared and provided to panel members to evaluate the bids.
- The score sheet should contain all the criteria and the weight for each criteria as well as the values to be applied for evaluation as indicated in the bid documents.
- Each panel member should after thorough evaluation independently his/her own value to each individual criteria.
- Score sheets should be signed by panel member as if necessary, written motivation may be

requested by panel members were vast discrepancies in the values awarded for each criterion exists.

- If the minimum qualifying score for functionality is indicated as a percentage in bid documents, the percentage scored for functionality may be calculated as follows:
  - *Value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;*
  - *The score for each criterion should be added to obtain the total score; and*
  - *The following formula should be used to convert the total score to percentage for functionality:*

    $PS = \frac{SO}{MS} x\ 100$ *; where*

    PS = percentage scored for functionality by bid under consideration

    SO = total score of bid under considerations

    MS = Maximum possible score
- Percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtain by each bidder for functionality.

(ii) Second stage: Evaluation in terms of the 80/20 or 90/10 preference points system

- Only bids that achieve the minimum qualifying score/ percentage for functionality must be evaluated further in accordance with the 80/20 or 90/10 preference points systems prescribed in preferential procurement regulations.

3.2.8 PRE-QUALIFYING BIDDERS

OPERATIONAL

3.2.8.1 **Circumstances for pre-qualification**

(i) Pre-qualification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom designed equipment, industrial plant, specialized services and contracts to be let under turnkey, design and build, or management contracting.

(ii) This process ensures that invitations to bid are extended only to those who have adequate capabilities and resources.

(iii) Pre-qualification is further useful to determine eligibility for preference for domestic contractors, when appropriate.

(iv) Pre-qualification should be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their:

- Capabilities with respect to personnel, equipment and construction or manufacturing facilities.
- Financial position.

3.2.8.2 **Processes for pre-qualification**

(i) The scope of the contract and a clear statement of the criteria for qualification should be sent to those who responded to the advert of invitation.

(ii) All applicants that meet the specified criteria should be allowed to bid.

(iii) The Municipality should inform all applicants of the results of pre-qualification.

(iv) As soon as pre-qualification is completed, the bidding documents should be made available to the qualified prospective bidders.

(v) For pre-qualification of groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's resources.

(vi) The list of pre-qualified firms in such instances should be updated periodically.

(vii) Verification of the information provided in the submission for pre-qualification should be confirmed at the time of award of contract and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully execute the contract.

(viii) The application of this process must consider the prescripts of the CIDBA, where construction services are required

3.2.9 DEVIATIONS

SCM TR 36

POLICY

3.2.9.1 Deviations is only to be used if justification exists and the necessary approval has been obtained within the provisions of the Delegation Framework

3.2.9.2 The Municipality will use deviations only in the following exceptional circumstances:

- Where the Municipality applied the competitive (open) bidding process, but the bids received were all non-responsive or not acceptable, thus the time required to go out on the same process has elapsed.
- Where the Municipality can buy under exceptionally advantageous conditions that only arise in the very short term.
- In the event that a change of provider would compel the Municipality to obtain spare parts or additional equipment or services that are not compatible or interchangeable with existing equipment or services that were obtained from an original provider.
- The goods, services or works to be bought have to be designed by the provider.
- When goods, services or works can only be supplied or rendered by a particular provider and no reasonable alternative or substitute exists.
- There are legislative, technological or safety reasons to restrict purchases to providers who have proven their capability.
- In cases of urgency.

(i) In cases of emergency.

(ii) If such goods or services are procured or available from a single provider only

(iii) For the acquisition of special works of art or historical objects where specifications are difficult to compile

(iv) Acquisition of animals for zoos; or

(v) In any other exceptional case where it is impractical or impossible to follow the official procurement process; and

(b) To ratify any minor breaches of the procurement processes by an official or committee

acting in terms of delegated powers or duties which are purely of a technical nature

3.2.9.3 The reasons for employing deviations must be approved by the AO or delegated authority prior to an award being made.

OPERATIONAL

3.2.9.4 Deviations are where the competition is limited in one way or another. Limited bidding is reserved for a specific group or category of possible providers. This mechanism must be used responsibly.

3.2.9.5 Three categories of deviations can be distinguished:

- *Multiple source - There is limited competition, hence only a few prospective bidders are allowed to make a proposal. This should be based on a thorough analysis of the market. Reasons for the decision must be documented and readily available.*
- *Single source - This form of bidding uses a transparent and equitable pre-selection process, to request only one amongst a few prospective bidders to make a proposal. This should be based on some form of recorded analysis of the market. Reasons for the decision must be documented and readily available.*
- *Sole source - There is no competition and only one bidder exists. Documentation substantiating the sole source, as proof must be submitted along with reasons for the decision that should be readily available.*

3.2.9.6 The SCMU must develop and maintain a SCM Deviation SOP and register. The SOP be reviewed when processes change, or new legislation comes into effect that impact on existing procedures.

3.2.10 TRANSVERSAL BIDS

POLICY

3.2.10.1 Transversal bids will only be relevant when the Municipality wishes to invite a tender/bid for itself and other Municipalities or wishes to participate in a tender together with other Municipalities or organs of state.

3.2.10.2 This form of bidding is different than when participating in a tender invited by another organ of state as referred to in SCM TR 32.

3.2.10.3 Council approval is required to participate in transversal bids.

PRINCIPLES

3.2.10.4 “Facilitation” means that the SCMU in the Office if the CFO will provide advice, assist and guide the transversal procurement process to ensure that the technical and governance requirements are met but will not actively participate in either the evaluation or adjudication process.

3.2.10.5 “Arranging” implies drawing up the business case, obtaining formal approval from affected Municipalities and the Council to proceed, the planning, organizing, logistical and bid administration requirements by the custodian Municipality.

3.2.10.6 Where the custodian Municipality has identified the need for a transversal tender, it must ensure that the procurement of goods or services or both for transversal use of Municipalities must be procured in terms of section 217 of the Constitution of the Republic of South Africa, 1996 and any other legislation and prescripts.

3.2.10.7 Where contemplated transversal tenders will result in lower unit costs/economies of scale or other corporate advantages as demonstrated by the required business case, the custodian Municipality must facilitate such transversal term contracts.

3.2.10.8 Contracts so procured must follow a strategic sourcing methodology and leverage buying power to achieve economies of scale and will be governed by the current requirements for supply chain management as envisaged.

3.2.10.9 The custodian Municipality must obtain written consent from the other Accounting Officers to participate in the arrangement of the contemplated transversal contract and need to do so immediately after conclusion of the business case and before proceeding to any further phases of the procurement process. In the case of a custodian Municipality, prior approval from the Council is additionally required.

3.2.10.10 Where an Accounting Officer opts to participate in a transversal contract, the Accounting Officer may not solicit bids for the same or similar product or service during the tenure of the transversal term contract.

3.2.10.11 The custodian Municipality will take full responsibility for the arrangement and conclusion of the bid process, inclusive of the formalization of the contracting arrangements noting that each participating Municipality, depending on the requirements and the nature of the contract, may have to sign a separate service level agreement with the selected service provider.

3.2.11 CONTRACTS SECURED BY OTHER ORGANS OF STATE

SCM TR 32

POLICY

3.2.11.1 the accounting officer to procure goods or services for the municipality under a contract secured by another organ of the state, but only if –

a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;

b) the municipality has no reason to believe that such contract was not validly procured;

c) there are demonstrable discounts or benefits for the municipality to do so; and

d) that other organ of state and the provider have consented to such procurement in writing.

3.2.11.2 Sub regulation (1)(c) and (d) do not apply if-

- A municipal entity procures goods or services through a contract secured by its parent municipality; or
- A municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

PRINCIPLES

3.2.11.3 The contact must be valid.

3.2.11.4 The municipality or municipal entity must confirm the duration of the contract between the service provider/s and the other organ of state and determine the remaining term of the contract

3.2.11.5 The participating municipality or municipal entity will procure the required goods or services under the same scope or specification, terms and conditions as provided for in the original contract

3.2.12 DIRECT NEGOTIATION

MSA 78-process and Municipal Land Disposal Policy

POLICY

3.2.12.1 Direct negotiations shall only be permitted after approval by the AO and shall be conducted in such a manner that limits disadvantage or prejudice to other stakeholders. Care should be taken to ensure that such a process does not allow the bidder concerned an unreasonable unfair opportunity.

3.2.12.2 Direct negotiations may only take place under the following circumstances:

- In cases of urgency due to unforeseen circumstances where lack of planning or negligence did not play a role and where following the standard competitive bidding process or the process prescribed for urgency would not be in the Municipality's best interest.
- Owing to a catastrophic event, there is an urgent need for the goods or services (an emergency), making it impractical to use other methods of procurement because of the time involved in using those methods.
- In cases where preferred bidders were identified through a competitive bidding process.
- In the case of competitive negotiation because of the technical character of the goods or construction, or because of the nature of the services, it is necessary for the procuring entity to negotiate with suppliers or service providers. Thus in the aforementioned case the first round of the two-stage bidding process has taken place where *inter alia* capacity and acceptability was established.
- In the case where a Municipal Systems Act, section 78 process was followed.
- In the case of an unsolicited bid process.

3.2.12.3 The official that can contractually commit the Municipality in this regard must lead the negotiation and must be supported by the user division and the SCMU.

3.2.12.4 The AO may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation does not allow any preferred bidder a second or unfair opportunity, is not to the detriment of any other bidder and does not lead to a higher price than the bid as submitted. Minutes of such negotiations must be kept for record purposes.

OPERATIONAL

3.2.12.5 The user division must supply the SCMU with sufficient specifications or terms of reference for the requirement.

3.2.12.6 The SCMU in consultation with the user division must determine the negotiation strategy and properly prepare for the negotiation.

3.2.12.7 The SCMU shall compile a formal and complete bid document and administer the whole bidding and negotiation process.

3.2.12.8 If direct negotiation is used as a mechanism in the case of emergency, then the details regarding the recording of emergency is noted under the heading for emergency procurement.

3.2.13 CONSULTANTS

Refer to SCM TR 35 and CCR 5

POLICY

3.2.13.1 The Municipality shall apply the National Treasury's instructions and Cost Containment Regulations in respect of the appointment of consultants.

3.2.13.2 Consultants should only be engaged when the necessary skills and/or resources to perform a project/duty/study are not available and the Accounting Officer cannot be reasonably expected either to train or to recruit people in the time available.

3.2.13.3 Consultants are engaged principally for the following reasons:

a) To provide specialized services for limited periods without any obligation of permanent employment;

b) To benefit from superior knowledge, transfer of skills and upgrading of a knowledge base while executing an assignment;

c) To provide independent advice on the most suitable approaches, methodologies and solutions of projects.

3.2.13.4 Consultant services cannot be dealt with in the same manner as general procurement, as this type of procurement contains specialised types of services, therefore specific procedures and processes should be adopted and put in place.

3.2.13.5 These procedures and processes should be on a case-by-case basis depending on the nature and the type of consulting work under consideration.

3.2.13.6 Take into account production of documents where copy right, patents/ownership is concerned when drafting documentation of this nature.

3.2.13.7 In addition to any requirement prescribed by this policy for competitive bids, bidders must where applicable furnish particulars of:

a) All consultancy services provided to the Municipality or any other municipality in the last 5 years

3.2.13.8 Any similar consultancy services provided to the Municipality or any other municipality in the last 5 yearsThe work undertaken by a consultant should be regulated by a contract. The Accounting Officer is, however, responsible for monitoring and evaluating contractor performance and outputs against project specifications and targets and should take remedial action if performance is below standard.

3.2.13.9 To set clear guidelines in the appointment of consultants and to ensure that consultants are paid within a regulated environment that is fair and equitable, thereby maximizing the value added to the municipality.

OPERATIONAL

3.2.13.10 All appointments of consultants in the municipality shall be in writing recommended by the Municipal Bid Adjudication Committee and approved by the Accounting Officer.

3.2.13.11 Managers may recommend the appointment of consultants to render specific services, should they be of the opinion that the Municipality lacks the required skills or necessary capacity and

those funds are available within their existing budgets.

3.2.13.12 The relevant Manager will be responsible to prepare a needs analyses on the required form, specifications and a term of reference and submit it together with the request to appoint of a consultant to the Municipal Specification Committee. The general procurement provisions of goods and services will apply in the appointment of consultants.

3.2.13.13 The AO or delegated authority should be responsible for preparing and implementing the project, selecting the consultant, awarding and subsequently administering the contract, as well as for the payment of consulting services under the project.

3.2.13.14 The municipality will only contract with consultants after a needs assessment and gap analysis report has confirmed that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required. This needs assessment and Gap Analysis Report (Attached as Annexure A) is to be used when procuring Consultancy Services through the Supply Chain Management Process. The report should be submitted together with the "Formal Request for Purchases" form to the Supply Chain Management Unit, prior to commencement of the supply chain process

3.2.13.15 The Accounting Officer will adopt a fair and reasonable remuneration framework for consultants in terms of regulation 5 (2) of the Regulations taking into account the rates:

a) determined in the ''Guideline on the fees for audits undertaken on behalf of the Auditor General of South Africa''; issued by the South African Institute of Chartered Accountants (SAICA);
b) set out in the ''Guide on Hourly Fee Rates for Consultants; issued by the Department of Public Service and Administration; or
c) as prescribed buy the body of regulating the profession of the consultant.

i. Furthermore, in terms of regulation 5 (4) of the CCR, the Accounting officer will negotiate cost effective consultancy rates for international consultants, taking into account the relevant international and market determined rates.

d) The travel and subsistence costs of consultants must be in accordance with the national travel policy issued by the National Department of Transport, as updated from time to time. (Regulation 5 (8).

3.2.13.16 The specific rules and procedures to be followed for selecting consultants depend on the circumstances of the particular case, which is guided by the need for the service, efficiency, transparency and a competitive process in providing the services.

3.2.13.17 When appointing consultants, it is necessary to strive to satisfy the following minimum requirements:

a) Meeting the highest standards of quality and efficiency;
b) Obtaining advice that is unbiased that is, being delivered by a consultant acting independently from an affiliation, economic or otherwise, which may cause conflict between the consultant's interests and those of government;
c) Ensuring that the advice proposed, or assignments executed, are meeting the ethical principles of the consultancy professions

3.2.13.18 The particular method to be followed for the selection of consultants for any given project should be selected by the AO or delegated authority in accordance with criteria outlined in the Guide for Accounting Officers of Municipalities and Municipal Entities, September 2005.

3.2.13.19 The method selection is determined by the scope of the project, the quality of the service, complexity of the project and whether projects are of a standard or routine nature. The following are some methods used for the appointment of consultants:

3.2.13.19.1 Registration in that profession
3.2.13.19.2 Adequate previous experience
3.2.13.19.3 Quality and Cost Based Selection (QCBS) whereby the tenderer who scores the highest number of points for quality and price is awarded the contract;
3.2.13.19.4 Quality Based Selection (QBS) whereby a contract is negotiated with the tenderer scoring the highest number of points for quality;
3.2.13.19.5 Selection under a fixed budget whereby tenderers are provided with the available budget and are requested to provide their best technical and financial proposals in separate envelopes and a contract is negotiated with the tenderer submitting the highest ranked technical offer.
3.2.13.19.6 Least-cost selection whereby tenderers submit technical proposals and financial proposals in two envelopes, the financial proposals of only those tenderers who obtain a quality score above a threshold are opened and the contract is awarded to the tenderer with the highest score based on price;
3.2.13.19.7 Single-source selection whereby a contract is negotiated with a single suitable tenderer.
3.2.13.19.8 Selection based on consultants' qualifications;
3.2.13.19.9 Selection of individual consultants;
3.2.13.19.10 Selection of particular types of consultants
3.2.13.19.11 Use of Nongovernmental Organisations (NGOs);
3.2.13.19.12 Inspection Agents;
3.2.13.19.13 Banks;
3.2.13.19.14 Auditors; and
3.2.13.19.15 Service delivery contractors

3.2.13.20 The competitive selection of professional service providers to provide construction works related services needs to take place within a flexible framework.

3.2.13.21 Accordingly, there needs to be a range of options that are supported by:

3.2.13.21.1 Standard procurement procedures and evaluation methods.
3.2.13.21.2 Standardised procurement documents.
3.2.13.21.3 A standard approach to the calculation of fees based on the cost of the construction works.
3.2.13.21.4 A single national register of qualified professional service providers.

3.2.13.22 A single national rotating data base to nominate qualified professional service providers to undertake low value contracts within a specified geographic area.

3.2.13.23 The CIDB has developed standardized procurement documents and proposed a framework for a register of professional service providers to support a range of methods of procurement.

3.2.13.24 While the specific rules and procedures to be followed for selecting consultants depend on the circumstances of the particular case, at least the following four major considerations should guide the Accounting Officer's/authority's policy on the selection process:

3.2.13.24.1 the need for high-quality services;

3.2.13.24.2 the need for economy and efficiency;

3.2.13.24.3 the need to give qualified consultants an opportunity to compete in providing the services;

3.2.13.24.4 the importance of transparency in the selection process.

3.2.13.25 Consultants should not be hired under the following circumstances:

3.2.13.25.1 A firm, which has been engaged by the AO to provide goods or works for a project and any of its affiliates, should be disqualified from providing consulting services for the same project. Similarly, a firm hired to provide consulting services for the preparation or implementation of a project and any of its affiliates, should be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the firm's earlier consulting services as described below) for the same project, unless the various firms (consultants, contractors, or suppliers) are performing the contractor's obligations under a turnkey or design-and-build contract;

3.2.13.25.2 Consultants or any of their affiliates should not be hired for any assignment which, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare an engineering design for an infrastructure project should not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization of public assets should not purchase, nor advise purchasers of such assets.

3.2.13.26 Steps to follow when selecting consultants:

3.2.13.26.1 The four stages of selection:

a) Identify the approach;
b) Invite bids/proposals;
c) Receive responses; and
d) Evaluate responses.

3.2.13.26.2 The Line Function Manager should prepare the Terms of Reference (TOR). The scope of the services described should be compatible with the available budget.

3.2.13.26.3 The TOR should define as clearly as possible the task directive (methodology), objectives, goals and scope of the assignment and provide background information, including a list of existing relevant studies and basic data, to facilitate the consultants' preparation of their bids.

3.2.13.26.4 Time frames linked to various tasks should be specified, as well as the frequency of monitoring actions.

3.2.13.26.5 The respective responsibilities of the Municipality and the consultants should be clearly defined.

3.2.13.26.6 The evaluation criteria, their respective weights, the minimum qualifying score for functionality and the values that will be applied for evaluation should be clearly

indicated. The evaluation criteria should include at least the following:

a) Consultants experience relevant to the project;
b) The quality of methodology;
c) The qualification of key personnel; and
d) The transfer of knowledge (where applicable).

3.2.13.26.7 These criteria should be divided into sub-criteria, for example, the sub-criteria under methodology might be innovation and level of detail. However the number of sub-criteria should be kept to the essential.

3.2.13.26.8 In more complicated projects, provision may also be made for pre-bid briefing sessions or presentations by bidders as part of the evaluation process.

3.2.13.26.9 A clear indication should be given of which preference point system in terms of the PPPFA and its associated Regulations will be applicable.

3.2.13.26.10 Detailed information on the evaluation process should be provided by firstly indicating the ratio of percentage between functionality and price. The percentage for price should be determined taking into account the complexity of the assignment and the relative importance of functionality. The percentage for price should normally be determined and approved by the Accounting Officer or his/her delegate prior to finalising the TOR.

3.2.13.26.11 If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, etc., to enable consultants to estimate the required resources. The TOR should list the services and surveys necessary to carry out the assignment and the expected outputs (for example reports, data, maps, surveys, etc) where applicable.

3.2.13.26.12 Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate should be based on the Accounting Officer's assessment of the resources needed to carry out the assignment such as staff time, logistical support and physical inputs (i.e. vehicles, laboratory equipment, etc).

3.2.13.26.13 The cost of staff time should be estimated on a realistic basis for foreign and local personnel.

3.2.13.26.14 The TOR should specify the validity period The TOR should form part of the standard bid documentation. At this stage the evaluation panel, consisting of at least three members who are demographically representative in terms of race, gender and expertise, should also be selected and finalised.

3.2.13.26.15 The Accounting Officer should ensure that contracts for consultants include retention and penalty clauses for poor performance and in this regard against the above specification, the accounting officer must invoke such clauses, where deemed necessary.

3.2.13.21.15 The Accounting officer must appoint consultants on a time and cost basis with

specific start and end dates. These dates must be clearly stated in the contract or agreement

3.2.13.27 Where practical appointment of consultant will be on a specific output specified basis, subject to specific measurable objectives and associated remuneration;

3.2.13.28 The relevant Manager will ensure that contracts with consultants shall include overall cost ceilings by specifying whether the contract price is inclusive or exclusive of travel and subsistence disbursements.

3.2.13.29 The relevant Manager will ensure that the tender documentation for the appointment of consultants contains a clause that the remuneration rates is subject to negotiation, not exceeding the rates mentioned in paragraph 6.2 below

3.2.13.30 Written contracts or agreements shall, as a minimum, contain the following:

a) Defined deliverables and quantifiable minimum service levels;

b) The mechanisms allowing for the frequent monitoring of progress in terms of the agreed objectives;

c) The period of employment;

d) The terms and conditions in terms of a specific regulation, code or collective agreement or tender;

e) The notice period required by either side to terminate the contract;

f) The rates agreed upon;

I. Overall cost ceilings as per paragraph 6.1.4 (g)
II. Transfer of skills where applicable, as per paragraph 6.1.4 (i);

g) The frequency of payment;

h) The method of payment; and Dispute resolution mechanisms, inclusive of steps to be taken if service delivery is not satisfactory

3.2.13.31 Where the project includes training or transfer of knowledge and skills, the terms of reference should indicate the objectives, nature, scope and goals of the training programme, including details on trainer sand trainees, skills to be transferred, time frames and monitoring and evaluation arrangements to enable consultants to estimate the required resources.

3.2.13.32 Copyright, patent right or ownership shall be vested in the Municipality.

3.2.13.33 Transfer of skills should at all times be part of the deliverables of the contract and never a verbal agreement or “gentlemen’s agreement”

3.2.13.34 The Accounting Officer may approve the extension of employment contracts or agreements provided that:

i. Sufficient funds are available;
ii. The extension is required as a result of additional operational requirements or incompleteness of assignment in the original time frame;
iii. The original terms of reference have not been deviated from;
iv. Delivery has been satisfactory and in accordance with the terms of reference; and
v. There must be skills transfer.

3.2.14 INFORMATION TECHNOLOGY

Refer to SCM TR 31

POLICY

3.2.14.1 The AO may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process

3.2.14.2 Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.

3.2.14.3 The AO must notify SITA together with a motivation of the IT needs if:

- The transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
- The transaction value of contract to be procured whether for one or more years exceed R50 million (VAT included).

3.2.14.4 If SITA comments on the submission and the Municipality disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant Provincial Treasury and the Auditor-General.

3.2.15 BANKING SERVICES

Refer to SCM TR 30

POLICY

3.2.15.1 A contract for banking services:

- Must be procured through competitive bids;
- Must be consistent with section 7 or 85 of the MFMA; and
- May not be for a period of more than 5 years at a time.

3.2.15.2 The process for procuring a contract for banking services must commence at least 9 months before the end of an existing contract.

3.2.15.3 The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper. Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act 94 of 1990).

3.2.16 GOODS NECESSITATING SPECIAL SAFETY ARRANGEMENTS

Refer to SCM TR 33

POLICY

3.2.16.1 The acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided where ever possible.

3.2.16.2 Where the storage of goods in bulk are justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the Accounting Officer.

3.2.17 PROCUREMENT FROM ABROAD

POLICY

3.2.17.1 The Municipality may procure from abroad if it can be certified in writing that:

- The product/service cannot be sourced locally or through local representatives and that no other similar product will serve the purpose.
- That a local sourcing process has been run without any success.
- The prices of the locally available supply/service are exorbitant.

3.2.17.2 For procurement outside the boundaries of South Africa, the same process is followed as for the procurement within South Africa, except for the following:

- Determining international advertising mechanisms.
- Determining the utilization of conditions applicable to foreign countries, such as Inco terms, if required.
- Determining if the price should be indicated in foreign currency, and if so, which currency.
- The estimated cost in foreign currency plus conversion factors.

3.2.17.3 The forward cover risk, must as far as feasible, be carried by the selected supplier.

OPERATIONAL

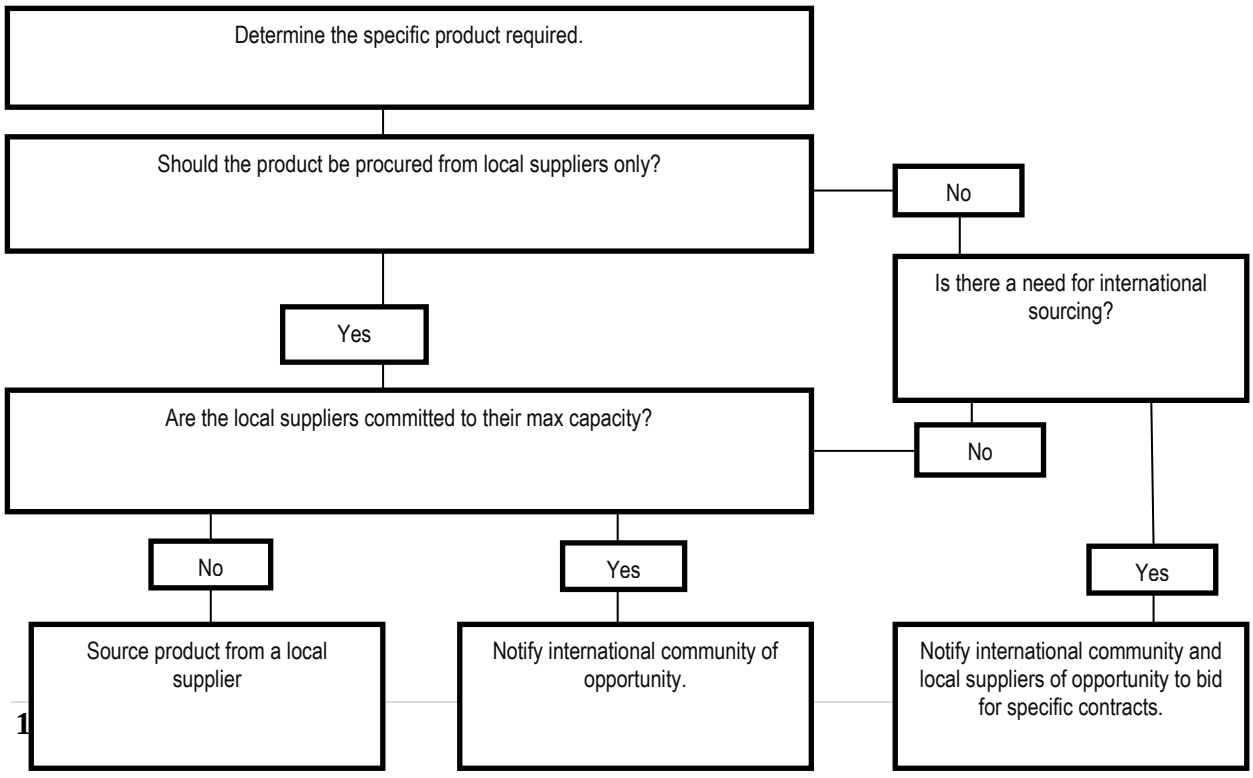
3.2.17.4 Always endeavor to find an agent in the country for a product that has to be purchased.

3.2.17.5 Once a certificate can be produced to indicate that the product cannot be sourced locally, the international sourcing can commence.

3.2.17.6 The stipulations of the General Conditions of Contract (GCC) are not necessarily applicable abroad, but overseas purchases, where applicable, are subject to the conditions applicable to the European Community. Such set of conditions are referred to as Inco terms.

3.2.17.7 Graphically the decision tree can be depicted as per Figure 3.2.17 below:

Figure 3.2.17: Local versus International Sourcing:



3.2.18 ORGANS OF STATE

Refer to MFMA section 110(2) and SCM TR 32

POLICY

3.2.18.1 The AO may procure goods and services for the Municipality under a contract secured by another organ of state, but only if:

3.2.18.2 Contract was secured by that other organ of state by means of competitive bidding process applicable to that organ of state.

3.2.18.3 The Municipality has no reason to believe that such contract was not validly procured.

3.2.18.4 There are demonstrable discounts or benefits for the Municipality to do so.

3.2.18.5 That the other organ of state and the provider have consented to such procurement in writing.

3.2.18.6 However, the above do not apply if a Municipality procures goods or services through a contract secured by a Municipal entity of which it is the parent Municipality.

3.2.18.7 The AO must make public the fact that such goods or services are procured otherwise than through the Municipality's SCM system, including:

- The kind of goods or services; and
- The name of the supplier.

3.2.19 ROSTER

POLICY

3.2.19.1 A roster system may be applied for a list of pre-approved suppliers, subject to the development and adoption of a Roster System Policy containing the following:

- Roster scope for Professional Service Providers and consultants.
- Registration of service providers.
- Qualification to be registered on the Roster System database.
- Sequencing and ranking of service providers on the Roster System database.
- Selection of a service provider on the Roster System database.
- Appointment of a service provider.
- Roster System computer based.
- Rotation system for the repairs of vehicles or mechanical equipment including IT equipment

PRINCIPLES

3.2.19.2 Roster Scope for Professional Service Providers and Consultants

- The professionals and consultants that work on pre-determined tariffs are a subset of the Professional Service Provider collective. The key basis for this principle is that some professionals no longer issue or work on gazetted tariffs. Hence, The Roster System should only apply to Professional Service Providers with pre-determined and gazetted tariffs.
- In this context it may include but not be limited to the following list of Professional Service Providers or consultants:
    (i) Architectural Services

(ii) Construction Services
(iii) Dispute Resolution Professionals
(iv) Engineering Services
- Civil Engineering Services
- Electrical Engineering
- Geotechnical Engineering
- Mechanical Engineering
- Miscellaneous Engineering Services
- Structural Engineering

(v) Environmental Impact Studies
(vi) Landscape Architectural Services
(vii) Management Services
(viii) Quantity Surveying Services
(ix) Land Surveying
(x) Transportation Planning
(xi) Town Planning
(xii) Property Valuations
(xiii) Arbitrations

- Guidelines tariffs that are issued by the National Department of Public Service and Administration determine hourly rates for consultants and could be adopted by the Municipality. These fees are only applicable to consulting disciplines for which no such standardized rates have already been determined by professional institutes or associations established in terms of legislation
- Where no gazetted tariffs exist for a particular profession, it may, at the Municipality's discretion, be acceptable for a proposed schedule of tariffs to be submitted to the Council for approval on an annual basis. The duly approved tariffs should then be deemed to satisfy the requirement of "pre-determined tariffs" for that profession in terms of this policy. It should be noted that this avenue should only be acceptable for recognized professions providing Professional Services
- Professional Service Providers and consultant disciplines without a pre-determined tariff list should be sourced through existing agreed mechanisms (verbal quotations; three quotations; or competitive bids).
- The logic to not source Professional Service Providers (PSP's) who work on pre-determined tariffs via a competitive process (such as three quotations or bids) is that there is no sense in comparing multiple offers where they are all the same rate. This principle supports the "cost effective" principles in the section 217 of the Constitution.
- A tariff or rate is only one factor in a total cost equation. Other factors may include the scope and/or the time taken to fulfil a task or responsibility, such as:

(i) Where some factors are variable, then the competitive sourcing methods of quotations and bids should be used e.g. if one service provider may be able to complete the work more

efficiently than another, then the Professional Service Provider should be sourced via a quotation or competitive bid and not via the Roster System.

(ii) Other total cost factors should all be constant or fixed (and not variable) before the Roster System is used for sourcing Pre-Determined Tariff PSPs i.e. the scope should be adequately defined and the time-period should also be firm (for example two months).

3.2.19.3 Registration of service providers

- Calls for Expressions of Interest for admission to the database in specified service disciplines should be made every two years in suitable media and in a manner that enables a wide spectrum of qualified respondents to respond to the call.
- Professional Service Providers should be requested to submit particulars sufficient for the Municipality to evaluate their eligibility and to establish their credentials and to assess their capabilities and capacities to perform work in service disciplines and sub disciplines.
- In order for the Professional Service Providers to be registered on the Roster System database they should also be registered on the Municipality's supplier database. The reason for this is that the Municipality already has a process and procedures in place for registration and there is no sense in duplication
- All registrations on the Roster System database should be administered centrally by the Supply Chain Management Unit:
- Registration on the Roster System database should be valid for a period of two years or such period to be determined by the Supply Chain Management Unit.
- Professional Service Providers should be required to advise the administrator of the database of any changes that impact their registration status on the Roster System database.
- Renewal of Professional Service Providers registration on the Roster System database should be required every two years.
- Service providers should be allowed to register for admission to the Roster System database at any time.

3.2.19.4 Qualification to be registered on the Roster System database

- Qualification of a Professional Service Providers should typically be done when the supplier register's on the Roster System.
- This qualification can be updated as the Professional Service Provider progresses and acquires other capabilities and experience.
- Admission to the Roster System database requires service providers to submit particulars sufficient for the Municipality to evaluate their eligibility and to establish their credentials and to assess their capabilities and capacities to perform contracts envisaged by the Municipality.
- Service providers should be registered on the Roster System against the different service disciplines applied for and verified by the Municipality.
- Sequencing and Ranking of service providers on the Roster System database:

(i) A set of pre-defined weighted factors, where the weighting of these factors should be determined beforehand and should be transparent, should be used to determine initial ranking

on the Roster System database per service discipline and sub-discipline.

(ii) Factors that should be taken into account in determining the positioning of service providers on the database (by service discipline)should include:

- Value of successfully completed previous work conducted for the Municipality where value of the work should mean, value of all work a service provider has performed for the Municipality in the preceding year period.
- The B-BBEEE status of the service provider.
  - When the amendments to the PPPFA is approved, the B-BBEE level of the service provider should be used

(iii) Performance of the service provider should not be a determinant of the sequencing of service providers on the Roster System. The rationale is that it may potentially impact on the Municipality's new service provider developmental initiatives and easily be manipulated. Should a service provider have performed poorly to the point that it is blacklisted, then such service provider should be taken off the Roster System immediately.

(iv) Service provider sequence and updates of sequence on the Roster System database should be triggered by the following events:

- Allocation of a new assignment to a service provider (new contract awarded).
- Where the service provider declines such new assignment, the service providers' sequence should change to reflect as if the service provider had accepted.
- Roster System database sequence updates should take place monthly.
- After suppliers have been registered on the database.
- Service providers should be removed from the Roster System database when such service provider no longer conducts business or is blacklisted due to default or misconduct by the Municipality.

(v) Should there be service providers that are equal in value and B-BBEE level, then they should be sequenced according to a random number generator or date of registration on the Municipality's supplier register.

3.2.19.5 Selection of a Professional Service Provider on the Roster System database

- To limit risk and exposure to the Municipality, the sourcing of Professional Service Providers via the Roster System should be limited within an upper Rand value threshold of R200 000.

(i) All projects exceeding this threshold should follow:

- The standard competitive quote and bidding process of the Municipality.
- The limited quote and bidding process where appropriate.

(ii) To limit the Municipal risk and exposure associated with project delays, the sourcing of service providers should be limited to pre-qualified service providers admitted to Roster System

- Where the assignment does not qualify as a Roster System appointment and a limited bid is required, the Roster System database should be used only for identification of the top listed service providers on

the Roster System database that the bid would be limited to.

- Deviation appointments should follow the separate limited bidding process, as follows:
  - (i) The Roster System database should be used to identify and select three service providers based on the following selection factors:
    - Select three Professional Service Providers from the required service discipline or sub discipline and from the top of the list for that discipline.
    - The three service providers should meet selection criteria of location (if applicable) and qualification.
    - Qualification should always takes preference where location criteria is not met
  - (ii) Selection on the basis of quality should not necessarily mean the best quality available, but quality appropriate for the assignment.
  - (iii) The Roster System selection process should always be executed by the Supply Chain Management Unit, who should recommend the selected service provider to the line management for appointment.
  - (iv) Where a recommended service provider declines an assignment offered, that service provider should move to the bottom of the list, and the service provider next in line should be selected.
  - (v) All correspondence relating to the Roster System and correspondence in this regard between Service Providers and the Municipality should be in writing.

3.2.19.6 Appointment of the Service Provider

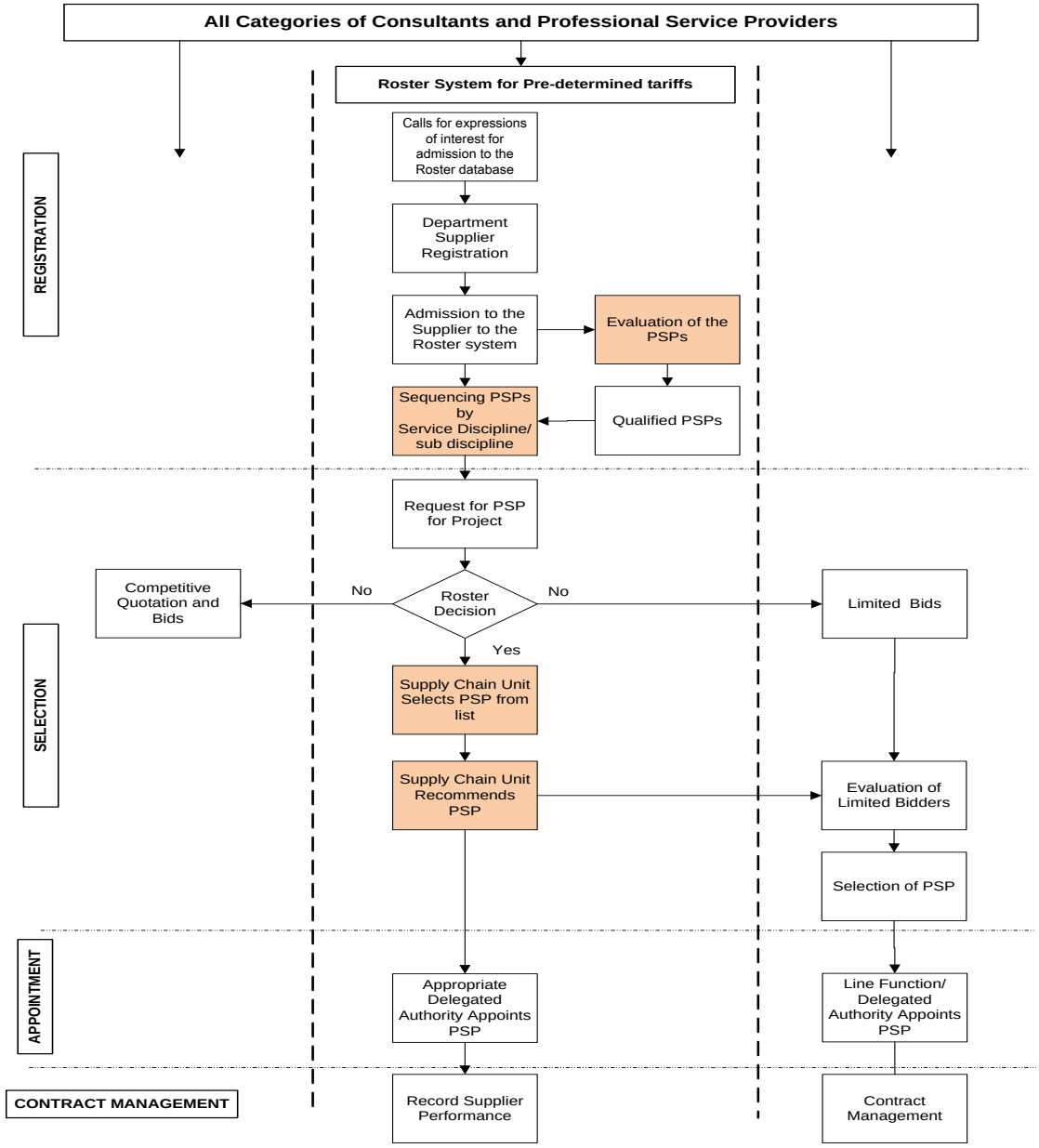
- The final appointment of the service provider is either processed using mechanisms in the SCMPPOS or the line function with the appropriate delegated authority.

3.2.19.7 Roster System Computer Based

- The professional services supplier Roster should operate as a centralised database to be used by the Municipality.
- The system should preferably be an electronic system, due to:
  - (i) IT is a key enabler to compile and credibly implement the Roster System approach therefore the Roster System database should be populated with relevant data to enable the Roster System.
  - (ii) The Roster System should be programmed to determine various service discipline allocations, ranking and sequencing of service providers, and administrative activities.
  - (iii) Programmed electronic databases should provide integrity of the Roster System and remove subjectivity concerning Roster System activities.
  - (iv) Security of the system should be such that the Roster System cannot be unduly manipulated so as to influence service provider selection.
- The effectiveness of the Roster System should be evaluated using the monitoring mechanisms in the SCMPPOS; hence it should be necessary to record key performance indicators relating to time, cost and the attainment of specific goals associated with a service provider contract. All records of admissions, deletions and transactions on the database should be stored for a period of five years.

OPERATIONS

3.2.19.8 The following diagram is generally self-explanatory and shows that the Roster System for pre-determined tariffs is a subset of the collective broader categories of consultants and Professional Service Providers. The high level process logic for the Roster System activities that fall within the Roster System boundaries and those process activities outside the boundaries is further illustrated, in graph 3.2.19.8 below.



3.2.20 LIST OF SELECTED SUPPLIERS

OPERATIONAL

3.2.20.1 Where goods or services of a specialised nature are required on a recurring basis, a list of approved providers for the supply of the goods or services may be established through the competitive bidding process.

3.2.20.2 The intention to establish a list of approved providers should be published in the appropriate media,

which may include the Government Tender Bulletin, and the closing time and date for inclusion in the list of approved providers should be indicated.

3.2.20.3 For this purpose, a questionnaire should be made available and should make provision for the following:

- *Among others, full details of the providers;*
- *Composition in terms of shareholding.*
- *B-BBEE profile of provider*
- *Personnel complement.*
- *Financial position.*
- *Ability to provide the goods, or services required.*

3.2.20.4 Requirements for admission to the list and criteria should be linked to the numeric value in terms of which applicants will be measured, for example acceptability, capacity, capability, facilities, resources etc.

3.2.20.5 A predetermined standard method of awarding points will be provided by the SCM Unit and should be followed.

3.2.20.6 The Bid Evaluation Committee should evaluate the applications received and any rejection of applicants should be motivated and recorded.

3.2.20.7 Once the list of providers has been approved by the relevant award structure, only the successful applicants are approached, depending on the circumstances, either by obtaining quotations (thresholds below R200 000) on a rotation basis or according to the bid procedure when the goods or services are required, with the exception that the requirement is not advertised again.

3.2.20.8 At this stage all criteria must be used in evaluation, namely functionality, cost and preferential procurement.

3.2.20.9 This list of approved providers should be updated regularly, at least once a year.

3.2.20.10 This list of approved providers should not be confused with and does not replace the list of prospective providers per commodity.

3.2.20.11 Should the user division wish to make use of the principle of approved list of providers for the appointment of consultants; the section dealing with the appointment of consultants will apply.

3.2.21 ROTATION SYSTEM FOR THE REPAIRS OF VEHICLES OR MECHANICAL EQUIPMENT; TYRE REPAIRS AND ICT EQUIPMENT

POLICY

3.2.21.1 Where it is difficult to ascertain the extent of damages or repairs to a mechanical part of a vehicle, mechanical equipment, tyres or IT equipment, such repairs should be done by means of a rotation process

3.2.21.2 In order to ensure fairness of this process, a dedicated official within the SCM unit will keep record of such transactions by capturing the information in a rotation register specifically devised for such purposes.

3.2.21.3 Only service providers that are registered on the Hessequa Municipality supplier database, by virtue

of them meeting the listing requirements, will be utilized on this basis.

3.2.21.4 In instances where the situation warrants that a service provider that do not meet the listing requirement must be utilized, a deviation process (section 3.2.9 of this policy) must be followed, stating the reason for the deviation

3.2.21.5 . The list of service providers who can make repairs should be regularly updated by the SCM official in conjunction with the fleet manager and other user departments

3.2.21.6 No supplier may be contacted to affect repairs without consultation with the SCM official responsible for updating the register

3.2.21.7 The responsible SCM official must keep the affected departments informed of the eligible suppliers in the event that such a situation arise over weekends for example or any time where it is impractical or impossible to consult with the SCM official

3.2.21.8 A requisition completed by the user department must reach the SCM unit within two (2) work days from the date the supplier was informed to affect repairs with a quotation from the supplier so that a purchase order can be generated by the SCM unit

3.2.21.9 Where it is impractical or impossible for the supplier to submit a quotation within the two (2) working day period an estimated amount should be provided

3.2.21.10 The user department should at all times ensure that the price quoted and the quality of work is in line with industry standards to prevent abuse of this system

3.2.21.11 Where the amount for the repairs is less than R30 000 (VAT Incl.) compliance with MSCM regulations 16 (c) and 17 (c) must be adhered to

3.2.21.12 Where the amount for the repairs is more than R30 000 (VAT Incl.) compliance with MSCM regulation 36 (1) (a) must be adhered to.

3.2.21.13 On a quarterly and annual basis the register must be signed off by the SCM Official and fleet manager/responsible official and it should be endorsed by the Head: SCM

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3.2.22 EMERGENCY

POLICY

3.2.22.1 Irrespective of monetary value, an emergency procurement process will only apply in serious, unexpected and potentially dangerous circumstances which require immediate rectification:

- In the event of a threat or interruption in the Municipality's ability to execute its mandate or render its services.
- In the event of an immediate threat to the environment or human safety.

3.2.22.2 The standard procurement processes will be bypassed. The Municipality may dispense with the invitation of bids and may obtain the requirement by means of quotations by preferably making use of the list of prospective providers or otherwise in any manner to the best interest of the Municipality.

3.2.22.3 The appropriate course of action for emergency shall be justifiable under the circumstances.

3.2.22.4 The nature of the emergency and the details of the justifiable procurement process followed will be recorded and reported.

OPERATIONAL

3.2.22.5 When the user division identifies an emergency, it must be endeavored to either involve the SCMU, the AO, or the CFO by contacting them. The emergency is to be certified by the head of department of the user division as an emergency and submitted to the SCMU for processing where possible.

3.2.22.6 The SCMU is to evaluate each case and make recommendations on the appropriate procurement process and action to be taken as well as proposals to mitigate the urgency.

3.2.22.7 The SCMU finalises the case, where possible.

3.2.22.8 In the event that it was not possible to liaise with the SCMU, the user division must, within 48 hours of such an emergency, inform the SCMU in writing of the following:

- The nature of the emergency.
- The date and time thereof.
- The details of the procurement action taken.
- The envisaged results should the standard procurement process had been followed.

3.2.22.9 Should it not be possible to conform to the above within 48 hours, the AO must be informed of this fact.

3.2.22.10 The SCMU must record such incidents for the monthly and quarterly reporting of the AO.

3.2.22.11 The SCMU must forward the details of the urgent procurement to the next meeting of the Bid Adjudication Committee for ratification.

3.2.23 UNSOLICITED BIDS

Refer to section 113 of the MFMA and SCM TR 37

POLICY

3.2.23.1 The Municipality is not obliged to consider unsolicited bids received outside a normal bidding process.

3.2.23.2 If the Accounting Officer decides to consider an unsolicited quotation/bid, he or she may do so only if:

- *It is in compliance with section 113 of the MFMA and SCM TR 37.*
- *The product or service offered in terms of the quote/bid is a unique innovative concept that will be exceptionally beneficial to, or have exceptional cost advantages for the Municipality.*
- *The person who made the offer is the sole provider of the product or service.*

3.2.23.3 The need for the product or service by the Municipality has been established during its strategic planning and budgeting processes.

PRINCIPLES

3.2.23.4 The Municipality is not obliged to consider an unsolicited bid received outside its normal bidding process.

3.2.23.5 If the Municipality decides to consider an unsolicited bid received outside a normal bidding process, it may do so only in accordance with this framework.

3.2.23.6 This framework strictly regulates and limits the power of the Municipality to approve unsolicited bids

received outside their normal tendering or other bidding processes and it may only do so if:

- The product or service offered in terms of the bid is a demonstrably or proven unique concept;
- The product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the Municipality or entity;
- The person who made the bid is the sole supplier of the product or service; and
- The reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.

3.2.23.7 If the Municipality decides to consider an unsolicited bid that complies with Municipal SCM regulation 37(2), the Municipality must make its decision public in accordance with section 21 A of the Municipal Systems Act, together with:

- Its reasons as to why the bid should not be open to other competitors;
- An explanation of the potential benefits for the Municipality or entity were it to accept the unsolicited bid; and
- An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

3.2.23.8 Written comments, including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant Provincial Treasury for comment.

3.2.23.9 If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the AO must submit to the Auditor General, the relevant Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations.

3.2.23.10 Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the Municipality to the bid may be entered into or signed within 30 days of the submission.

OPERATIONAL

3.2.23.11 The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the AO, depending on its delegations.

3.2.23.12 The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.

3.2.23.13 A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

3.2.23.14 When considering the matter, the adjudication committee must take into account:

- Any comments submitted by the public; and
- Any written comments and recommendations of the National Treasury or the relevant Provincial Treasury.

3.2.23.15 All documents must be made public by the Municipality in terms of a requirement of the Municipal Systems Act, the MFMA or other applicable legislation must be conveyed to the local community-

- By displaying the documents at the Municipality's head and satellite offices and libraries;
- By displaying the documents on the Municipality's official website if the Municipality has a website as envisaged by section 2 I B; and
- By notifying the local community in accordance with section 21, of the place, including the

website address, where detailed particulars concerning the documents can be obtained.

3.2.23.16 Ifany recommendations of the NT or PT are rejected or not followed, the AO must submit to the AG, relevant PT and NT the reasons for rejecting or not following those recommendations.

3.2.23.17 Such submission must be made within 7 days after the decision on the award of the unsolicited bid is taken, but no contract committing the Municipality to the bid may be entered into or signed within 30 days of the submission.

3.2.24 SPONSORSHIPS

Refer to SCM TR 48

POLICY

3.2.24.1 The Municipal Grant-in-Aid Policy guides the management of sponsorships as it provides for the opportunity for developing methods of joint funding strategies with outside agencies such as matching funding or sponsorship partnerships to meet the objectives of a developmental local government.

3.2.24.2 Reporting to the Provincial Treasury and National Treasury must promptly be executed as per TR 48.

3.2.24.3 The principles guiding the Grant-in-Aid Policy are to:

- Promote fairness, equitability and transparency in the process of granting aid funding.
- Support the poor, aged, youth, disabled and women.
- Promote sustainable solutions to serve the poor, marginalized or otherwise vulnerable.

3.2.24.4Identify and develop sustainable matching funding or sponsorship partnerships to meet the objectives of a developmental local government.

PRINCIPLES

3.2.24.5 The AO must promptly disclose to the NT and relevant PT any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is:

- A provider or prospective provider of goods or services; or
- A recipient or prospective recipient of goods disposed or to be disposed.

OPERATIONAL

3.2.24.6 Granting of a sponsorship

- The accounting officer may approve sponsorships of state money and other movable property in the interest of the Municipality.
- When such cash amounts exceed R100 000 per case, the approval of the Council must be sought.

3.2.24.7 Acceptance of a sponsorship to the Municipality

- The accounting officer must promptly disclose to the National Treasury and the relevant Provincial Treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is :
  - (i) A provider or prospective provider of goods or services; or
  - (ii) A recipient or prospective recipient of goods disposed or to be disposed.

- The accounting officer may approve the acceptance of any sponsorship to the Municipality.
- All cash sponsorships must be paid into the Municipal Main Bank Account.
- Where it is not apparent for what purpose a sponsorship should be applied, the Council may decide how it must be utilised.
- All sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the Municipality.
- Donor funding received in terms of the Reconstruction and Development Fund Act (Act 7 of 1994, as amended by Act 79 of 1998), must be dealt with as determined by the National Treasury from time to time.

3.2.24.8 Identity of sponsors

- When a donor or sponsor requests to remain anonymous, the accounting officer must submit to the Council a certificate from both the Public Protector and the Auditor-General, which states that the identity of the donor or sponsor has been revealed to them, that they have noted it and have no objection.
- The above provision in no way limits the Auditor-General or the Public Protector from supplying this information to their staff, and where they deem it in the public interest, to report on this.

VOLUME4: CONTRACT NEGOTIATIONS, ADMINISTRATION, MANAGEMENT AND CONTRACT RELATED RISK MANAGEMENT

PART 4.1: CONTRACTUAL COMMITMENTS

4.1.1 CONCLUSION OF CONTRACTS

Refer to section 116 of the MFMA and SCM TR 51

POLICY

4.1.1.1 The SCM Unit must finalize the adjudication by issuing the letter of acceptance.

4.1.1.2 The acceptance of a successful bid must be in writing and must be sent by registered/certified mail/ email or as indicated in a special condition, the principle being that there must be a mechanism of proof of delivery.

4.1.1.3 The official with the necessary delegated authority to commit the Municipality, must be satisfied that all the necessary contractual conditions have been included prior to signing.

4.1.1.4 The Municipality's contract documents shall promote uniformity across the entity.

4.1.1.5 Both parties to the contract shall sign the contract form or formal contract.

4.1.1.6 Legal copies shall be kept in a safe place for judicial reference.

OPERATIONAL

4.1.1.7 A binding contract is concluded when a bidder's offer is accepted unconditionally by the Municipality before the validity period has expired. By signing the letters of acceptance, the contract is concluded.

4.1.1.8 After the award of a quotation/bid, the quotation/bid shall be finalized by the relevant SCMU by issuing the letter of acceptance, the contract form, including a service level agreement and formal contract, where applicable.

4.1.1.9 The SCMU must draw up the contractual documentation in line with recommendations approved by the relevant Bid Adjudication Committee and delegated authority.

4.1.1.10 It is the responsibility of the SCMU to determine under which circumstances they have to solicit legal assistance.

4.1.1.11 Care must be taken that letters of acceptance contain no conditions, or do not even imply the acceptance of conditions, which the relevant Bid Adjudication Committee and delegated authority has not approved as being part of the conditions of the contract to be concluded.

4.1.1.12 Any special conditions set by the bidder, which has not been withdrawn, as well as any special conditions, which have been approved, must also be included in the letter of acceptance.

4.1.1.13 In the case of term contracts where a bigger number of items are involved, the contract circular drawn up, must be used as part of the letter of acceptance.

4.1.1.14 The SCMU must inform the successful provider of the award by way of the letter of acceptance and invite the provider to come and sign the contract form or formal contract where applicable.

4.1.1.15 Both parties to the contract shall sign the contract form or formal contract.

4.1.1.16 If more than one company bids as a consortium, the letter of acceptance and the contract form must

be addressed to the company that signed the bid on behalf of the consortium.

4.1.1.17 After the provider signature has been obtained, the SCMU will submit the contract form or formal contract to the official with the authority to commit the Municipality through a signature.

4.1.1.18 The signatory must ensure that he/she are satisfied that all the necessary conditions are included.

4.1.1.19 All correspondence, including letters of acceptance of bids, is signed on behalf of the AO. This is an administrative arrangement and although the AO accepts accountability for the contract, which is concluded, the signatory remains co-responsible for the contract and for the correctness of the data supplied.

4.1.1.20 The contract form to be signed should be accurate, impersonal, unambiguous, legible and complete.

4.1.1.21 The contract form, together with all the documents such as the specification, special conditions and GCC, which together make up the full contract document, serves as basis for placing orders, the administration of contracts and the settlement of disputes.

4.1.1.22 Discounts are always indicated in the contract form so that the Municipality, where possible, may utilize them.

4.1.1.23 Legal copies shall be kept in a safe place for judicial reference.

4.1.2 FORMAL CONTRACTS

POLICY

4.1.2.1 Where possible, the formal contract template must form part of the quotation/bid documents.

4.1.2.2 Formal contracts are concluded only where this is stated as a requirement in the quotation/bid document.

4.1.2.3 If a formal contract is concluded, an order must still be placed with the successful provider.

OPERATIONAL

4.1.2.4 Where all parties concerned sign further documentation as an agreement in addition to the letter of acceptance and the contract form, it is defined as a formal contract.

4.1.2.5 Such formal contract will usually be in addition to the task directive/specification or special conditions of the bid.

4.1.2.6 Should such a formal agreement contain conditions that were not approved by the AO or the delegated authority, then such proposed formal contract must be submitted for approval prior to signature. Should the document contain new conditions, then these conditions must be cleared with legal counsel beforehand.

4.1.2.7 Both the user division and the SCMU have a responsibility towards managing a contract.

4.1.2.8 The nature of the responsibility will determine who manages the specific contractual aspect.

4.1.2.9 The SCMU will issue further directives and guidance on contract management and administration.

4.1.2.10 The following types of Agreements are applicable (non exhaustive):

- IT Service Level Agreement
- General Conditions of Contract
- Consortium Agreement
- Sale of Land Agreement

- Services Agreement

4.1.3 SERVICE LEVEL AGREEMENTS

POLICY

4.1.3.1 A service level agreement (SLA) may be compiled and signed if required.

OPERATIONAL

4.1.3.2 A Service Level Agreement (SLA) is a document, which defines the relationship between two parties, namely the contractor and the client and spells out services, service levels and activities to be executed, due dates, turnaround times and related penalties.

4.1.3.3 The following templates are available to guide actioning:

4.1.3.3.1 IT Service level agreement

4.1.3.3.2 Services Agreement

4.1.4 TIME OF CONCLUSION

POLICY

4.1.4.1 The contract is concluded at the time that the letter of acceptance is posted even if the contract form and formal contract is only signed at a later date, unless stated otherwise in the quotation/bid documents.

OPERATIONAL

4.1.4.2 In terms of paragraph 31 of the GCC, the acceptance of a bid must be in writing and must be sent by registered/certified mai/ e-maill or as indicated in a special condition, the principle being that there must be a mechanism of proof of delivery. Therefore, once the letter of acceptance has been sent, a contractual commitment has been made and it becomes effective. The relevant date stamp of the Post Office serves as proof of the time.

4.1.4.3 If the letter of acceptance is handed over, ensure a mechanism of proof of delivery and keep the proof on file to ensure it is documented that a contractual commitment was established before the validity expired.

4.1.4.4 The signing of the contract form or formal contract where applicable serves to enhance the contract established.

PART 4.2: CONTRACT MANAGEMENT

4.2.1 GENERAL RESPONSIBITLITY

Refer to section 65(2) and 116 of the MFMA as well as MFMA circular 62/2012

POLICY

4.2.1.1 The relevant user division takes responsibility for day-to-day management and monitoring of a contract in line with the contractual conditions.

OPERATIONAL

4.2.1.2 Contract management can be defined as maintaining control or influence over the contractual agreement between the Municipality and the contractor including the administering and regulating of the agreement.

4.2.1.3 The SCM Unit takes responsibility for maintaining original contract documentation and monitoring contracts in terms of renewals, transfers, terminations, amendments and price adjustments

4.2.2 MANAGING AND ADMINISTRATING THE CONTRACT

POLICY

4.2.2.1 The SCMU shall ensure that all reasonable steps are taken to properly enforce a contract.

OPERATIONAL

4.2.2.2 Both the user division/line manager and the SCMUhave a responsibility towards managing and administrating a contract.

4.2.2.3 The nature of the responsibility will determine who manages the specific contractual aspect.

4.2.2.4 In general the responsibilities are as follows:

(i) CONTRACT ADMINISTRATION:

CONTRACT ADMINISTRATION DEFINITION
• Contract Administration is defined as the functions performed before or after a contract is signed or finalised, and includes the handling or issuance of tenders, the handling of payments and budgeting and the resolution of disputes from contracts. • The duties associated with contract administration are taking control of the way the contract is prepared, analysed and negotiated. • A contract administrator may issue a request for proposal to potential bidders and inviting them to bid on a contract. • Once a bidder is selected, the contract administrator sees the contract to its conclusion, handing it over to the contract manager after the agreement is signed by all parties concerned.
OVERVIEW
Contract administration concentrates on the over-all relationship between the Municipality and the supplier from contract award to contract close-out ensuring the supplier delivers the product and/or service in conformance with the bid document requirements. The contract administrator must completely understand all aspects of the bid document.

CONTRACT ADMINISTRATION STEPS	
STEP 1– Assign contract administrator	Personnel assigned to perform contract administration activities are referred to as a "contract administrator". The person assigned as contract administrator must be made aware of the expectations and requirements of the position. A contract administrator must: 1. Have sufficient knowledge of contracting principles as it relates to their responsibilities in administering the contract. 2. Communicate with both the contract manager and supplier on contractual issues. 3. Maintain records or logs for archiving purposes at the completion of the contract.
STEP 2 – Maintain relationship with contract manager	Although the quantum of contract administration activities may differ depending on the magnitude of the contract, it is critical that the contract administrator involves the contract manager *(if the contract management responsibility has been assigned to another official)* in the contract administration activities. The contract manager remains the liaison between the Municipality and the successful bidder.
STEP 3 – Establish the fundamentals material to the specific contract	Once a bid is awarded, the contract administration responsibilities should be reviewed with the person assigned to the role. Any additional contract administration activities specific to the transaction should be identified and specified.
STEP 4 – Communication is key	A key factor in successful contract administration is communication. It is essential for contract administrators to understand the provisions of the bid document, have the ability to communicate contract obligations to all parties involved, and maintain control over the contract performance.
STEP 5- Post-award orientations	Prior to commencing services it is important that the contract administrator, bidder and contract manager meet to ensure a clear and mutual understanding of all contract requirements and to identify and resolve potential problems prior to any contract performance.
STEP 6 – Open and maintain contract administration file	The contract administration file should consist of atleast the following dividers: 1. Cover page 2. Index page 3. Complete copy of bid document with all attachments to the involved parties. 4. Signed contract ,attachments and addendums 5. Key Municipalityal staff and supplier personnel contacts, their responsibilities and authority. 6. Internal policies and procedures specific to the contract. 7. Contract reporting requirements between the contract administrator, contract manager and/or the supplier. 8. Contract payment process, including review time and processing time requirements to avoid payment penalties. 9. Acceptance criteria and review processes as required by the contract. 10. 'Special Conditions' to contract. 11. Amendments, variations or extensions.

	12. Resolving disputes or any other contractual issues. 13. Reporting requirements for the bid document performance monitoring, audit files and retention. 14. Health and Safety clearances and notices 15. Public notices (general day to day notices to the public) 16. Logistical requirements (assessment of equipment and human resources) 17. Logistics plan 18. Logistical clearances (copies of permits, vehicle licences, access control of staff and contractors) 19. Tax clearances 20. Declarations of interest 21. Guarantees or warrantees (if applicable) 22. Clearances for quarantine goods 23. International transports and compliance documents, permits, licenses and clearances 24. Compliance notices (all related Government programs) 25. Contractor feedback 26. Legal matters (if applicable) 27. Contract termination 28. Project closure 29. File closure
THE DO'S AND DON'TS OF CONTRACT ADMINISTRATION	
The Contract Administrator MUST:	Effective contract administration activities include: 1. Notifying the contractor to begin work. 2. Monitoring contract activities in liaison with the contract manager for compliance with: a. Work progress to ensure services are performed according to the quality, quantity, objectives, timeframes and manner specified within the contract. b. Preferences granted to contractors and/or subcontractors to ensure attainment of preferential goals. c. Review progress reports, status reports, and timesheets as required. 3. Monitoring that the contract manager approves the final product/services by submitting a written document accepting the deliverables. 4. Providing any documentation to the relevant treasury and AGSA when requested in terms of the MFMA. 5. Monitoring expenditures, ensuring funding availability when contract extends over multiple years. 6. Verifying accuracy of invoices and ensuring that the relevant programme manager approves invoices for payment. 7. Identifying and informing the contract manager of any amendments and/or contract renewals in a timely fashion as determined by Municipal policies and

	complexity of the request (often three – six months in advance). 8. Ensuring that the contract manager verifies all work is completed and accepted by the Municipality prior to the contract expiration date. 9. Performing contract close out activities: a. Completing Contractor Evaluation Report for consulting services or in accordance with Municipality policies and procedures. b. Notifying responsible parties when funds can be disencumbered. 10. Chanelling any contract disputes immediately to the Municipal principles and legal services. 11. Keeping an accurate auditable paper trail of contract administration. 12. Ensure compliance by the contractor and contract manager with regards to external and/or applicable procedures not specifically defined in the contract.
The Contract Administrator MUST NOT:	Contract administrators are not authorised to: 1. Instruct the contractor to start work before the contract is awarded. 2. Change the scope of the contract without doing so through the formal SCM amendment process. 3. Direct the contractor to perform work that is not specifically described in and funded by the contract. 4. Extend the time period of the contract without execution of an approved amendment. 5. Allow the contractor to incur any additional costs over the limit set by the contract. 6. Sign a contract as the Municipality's authorised signatory unless authorised in writing. 7. Sign any contractor's contract form. 8. Provide any form of warrantee or guarantee on behalf of the Municipality.
ETHICS	
All officials who perform contract administration functions not only need to understand how to administer a contract butt are also expected to adhere to and conduct business by maintaining the same ethical standards as if they were a buyer. Contract administrators must: 1. Conduct themselves in a professional manner, refraining from mixing outside friendships with business. 2. Accurately account for expenditures and property received. 3. Be aware that perceptions can override reality. 4. Involve the Municipality's SCM, management and legal services when questions arise regarding acceptable or unacceptable behavior when dealing with suppliers.	
RECORD KEEPING	
Good record keeping	The Municipality is responsible for maintaining records in sufficient detail to allow anyone to review documentation and understand how the procurement was requested, conducted, awarded and administered. Contract administrators must maintain good record keeping activities and ensure the records are turned over for archiving at the completion of the contract term.

	The records maintained by the contract manager must be incorporated into the contract file and retained for compliance and/or auditing purposes. According to sections 11 and 12 of the National Archives Act, 2001 (Act 36 of 2001) – public records must be maintained for 20 years.
Record retention requirement	The Municipality is reminded of the examination and audit requirements as prescribed requiring transaction documentation to be retained for three (3) years after payment of the last invoice unless a longer period is required in the contract.
Recommended IT and administrative retention periods	Electronic document management systems may require additional documentation filing and retention requirements

(ii) CONTRACT MANAGEMENT:

CONTRACT MANAGEMENT DEFINITION
• Contract management focuses on what happens after a contract is concluded and signed. • According to the International Encyclopedia of the Social Sciences, management involves deciding what human, financial and technical resources an organisation will devote to various initiatives. • Thus, a contract manager decides how the Municipality will ensure that it does what it agreed to do in an agreement with another party and that the other party also fulfills its obligations.
OVERVIEW
• After a contract has been signed there are a number of matters that should be addressed to ensure the foundation of successful contract management. It is important for those responsible for contract management to understand both the contract provisions and contractual relationships at the outset. • This Part provides information and practical advice to contract managers regarding the management of contracts with suppliers of goods and services. By reading this guideline, contract managers will gain an understanding of: 1. the benefits of undertaking effective contract management; and 2. the key tasks to be undertaken by the contract manager during the contract management period.
CONTRACT MANAGEMENT STEPS

STEP 1– Assign contract manager	Personnel assigned to perform contract management activities are referred to as a "contract manager". The person assigned as contract manager must be made aware of the expectations and requirements of the position. Effective contract management requires a commitment to: 1. Achieve the object of government legislation. 2. Proactively manage the contract. 3. Monitor the performance of the supplier. 4. Undertake responsibilities as a customer. 5. Ensure honesty and transparency. 6. Develop and maintain good relationships. 7. Communicate effectively and provide feedback. 8. Oversee operation of the contract.

	9. Determine and take remedial actions by agreement with the provider. 10. Negotiate remedies with the provider 11. Escalate contract problems as necessary. 12. Maintain/develop contract specifications. 13. Manage risks.
STEP 2 – Maintain relationship with contract administrator	The contract manager must maintain a direct relationship with the contract administrator (*if the contract administration responsibility has been assigned to another official*) to continuously ensure: 1. Obtaining value for money in the expenditure of public money. 2. Providing for ethical and fair treatment of participants. 3. Probity, accountability and transparency in procurement operations.
STEP 3 – Establish the fundamentals material to the specific contract	The fundamentals of any contract management process is to: 1. Ensure timely delivery of goods and services. 2. Achieve the full benefits of the procurement process and contract. 3. Minimise costs associated with risks arising during the term of the contract. 4. Improve the benefits flowing to customers and suppliers. 5. Promote innovation and continuous improvement. 6. Create additional benefits for both parties through good relationships. 7. Achieve value for money in the procurement of goods and services.
STEP 4 – Communication is key	Continuous communication between parties is the most important element of good contract management to ultimately achieve the intended objectives of the SCM process. All the effort undertaken through the acquisition planning and supplier evaluation process is of little value unless the intended benefits are actually realised during the period of the contract. The key to effective contract management is having a clear set of contract outputs or outcomes and actively communicating with the supplier to ensure the delivery and achievement of these requirements.
STEP 5- Post contract conclusion orientation	The basis for developing an effective working relationship with the service provider is to firstly analyse the contract and agree the service provider's understanding of the contract, by jointly: 1. Identifying the deliverables and how their achievement will be measured. 2. Identify and agree on service levels and format of delivery. 3. Ascertaining timeframes, particularly any critical deadlines. 4. Understanding payment arrangements, including links between payments and performance. 5. Identifying the roles and responsibilities of both parties and allocate responsibilities. 6. Confirming agreement with the service provider, in relation to the management of any sensitive matters and/or disputes.
STEP 6 – Open and maintain contract management file	The contract management file should consist of at least the following dividers: 1. Cover page 2. Index page 3. Copy of signed contract

	4. Amendments and supplementary agreements 5. Subcontract arrangements 6. Confidentiality and disclosure arrangements 7. Project plan 8. Project charter/Terms of Reference 9. Record of protected information 10. Project team contact details and roles and responsibilities of each 11. Payment schedule, invoice, substantiating evidence and certified payment advices (*Develop spreadsheets for tracking expenditures, invoices and/or timekeeping for the life of the transaction*) 12. Agreed service levels and penalty arrangement (if applicable) 13. Acceptance criteria, quality and compliance reviews 14. Risk management 15. Contract administrators' communique 16. Meeting notes/minutes/general communication 17. Deliverables 18. Variations or Extensions 19. Disputes or Complaints 20. General (cession, insolvency, force majeure/etc.) 21. Contract termination 22. Project closure 23. File closure
STEP 7 – Risk management activities	Risks related to the contract management must be considered and managed. Some of the more common risks related to managing a contract include: 1. The failure of either party to fulfil the conditions of the contract. 2. Inadequately administering/managing the contract. 3. Unauthorised changes to the contract. 4. The failure to meet the strategic objectives of the bid/contract. 5. The loss of intellectual property. 6. Changing scope. 7. Changing technology. 8. Fraud. 9. The lack of properly maintained records. 10. Unethical behaviour or conflicts of interest. 11. Changes or absences in key personnel. 12. New business processes do not integrate with existing processes. 13. People (in both organisations) fail to understand their obligations and responsibilities 14. There are misunderstandings, disagreements and underestimations. 15. Too many issues are escalated inappropriately 16. Progress is slow or there seems to be an inability to move forward 17. The intended benefits are not realised

	18. Opportunities to improve value for money and performance are missed. 19. Ultimately, the contract becomes unworkable. 20. Poorly drafted contract. 21. Inadequate resources are assigned to contract management 22. The customer team does not match the provider team in terms of either skills or experience (or both) 23. The wrong people are put in place, leading to personality clashes. 24. The context, complexities and dependencies of the contract are not well understood 25. There is a failure to check provider assumptions 26. Authorities or responsibilities relating to commercial decisions are not clear 27. Lack of performance measurement or benchmarking by the customer 28. Failure to monitor and manage retained risks (statutory, political and commercial). These risks should be monitored and eliminated or minimised during the contract management period. New risks may also be identified and documented during this period. Appropriate professional advice should be sought at an early stage where a legal or governance issue arises.
THE DO'S AND DON'TS OF CONTRACT MANAGEMENT	
The Contract Manager MUST:	Effective contract management activities include: 1. That the contracted goods or services are provided in accordance with the specifications and the terms of the contract and are certified before payment (including progress payment) is authorised. 2. Contract risks are reviewed, monitored and managed. 3. Effective communication is maintained between all parties. 4. Variations to the contract are processed and approved in accordance with the contract and other relevant prescripts. 5. Ongoing requirements (e.g. preferences, Tax clearance certificates and insurance) are validated for the period of the contract. 6. Continuous improvement practices are applied to future contracting processes. 7. Appropriate records and documentation are maintained. 8. Ensure specific procurement procedures are implemented as prescribed
The Contract Manager MUST NOT:	Contract managers are not authorised to: 1. Instruct the contractor to start work before the contract is awarded. 2. Change the scope of the contract without doing so through the formal SCM amendment process. 3. Direct the contractor to perform work that is not specifically described in and funded by the contract. 4. Extend the time period of the contract without execution of an approved amendment. 5. Allow the contractor to incur any additional costs over the limit set by the contract. 6. Sign a contract as the Municipality's authorised signatory unless authorised in writing.

	7. Sign any contractor's contract form. 8. Provide any form of warrantee or guarantee on behalf of the Municipality.
ETHICS	
All officials who perform contract management functions not only need to understand how to manage a contract but are also expected to adhere to and conduct business by maintaining the same ethical standards as if they were a buyer. Contract managers must: 1. Conduct themselves in a professional manner, refraining from mixing outside friendships with business. 2. Accurately account for expenditures and property received. 3. Be aware that perceptions can override reality. 4. Involve the Municipality's SCM, management and legal services when questions arise regarding acceptable or unacceptable behavior when dealing with suppliers.	
RECORD KEEPING	
Good record keeping	• Municipalities are responsible for maintaining records in sufficient detail to allow anyone to review the documentation and understand how the procurement was requested, conducted, awarded and administered. • Contract managers must maintain good record keeping activities and ensure the records are turned over for archiving at the completion of the contract term. • The records maintained by the contract administrator must be incorporated into the contract file and retained for compliance and/or auditing purposes. • According to sections 11 and 12 of the National Archives Act, 2001 (Act 36 of 2001) – public records must be maintained for 20 years.
Record retention requirement	Municipalities are reminded of the examination and audit requirements as prescribed requiring transaction documentation to be retained for three (3) years after payment of the last invoice unless a longer period is required in the contract.
Recommended IT and administrative retention periods	Electronic Document Management Systems may require additional documentation filing and retention requirements

4.2.3 CORRECTION OF INCORRECT ACCEPTANCE

POLICY

4.2.3.1 Mistakes in the letter of acceptance, contract form and/or formal contract must be reported immediately to the SCMU.

4.2.3.2 Every effort must be made without delay to recover the original letter of acceptance, contract form and/or formal contract from the contractor.

4.2.3.3 Where it is not possible to recover the original, all particulars of the incorrect acceptance must be reported to the AO or delegated authority together with a recommendation regarding the corrective steps that are envisaged.

OPERATIONAL

4.2.3.4 As soon as it has been determined that a mistake occurred in the letter of acceptance or other

contractual documentation, the contractor must be contacted to endeavor to obtain the incorrect documentation.

4.2.3.5 Discuss the mistake with the contractor on a 'without prejudice basis' as well as what the rectification would entail so that the contractor is willing to return the contractual documentation for rectification.

4.2.3.6 Should the contractor not wish to return the documentation to the Municipality, this fact as well as the reasons must be recorded and submitted to the Accounting Officer or delegated authority indicating the effect that the non-rectification will have on the Municipality.

4.2.3.7 Legal advice and support must be sourced to guide further action.

4.2.4 PLACING ORDERS

POLICY

4.2.4.1 Placing orders is the sole responsibility of the SCMU.

4.2.4.2 Orders are to be placed in accordance with the contract and in accordance with the instructions of the financial policy.

OPERATIONAL

4.2.4.3 An official order for any goods and/or services may only be issued under the following circumstances:

- *If the amount contracted for is appropriated in the relevant budget item.*
- *The order is issued for goods and/or services obtained in accordance with procedures delegated to the AO or when a valid contract is in place.*
- *Regarding ad hoc contracts and specific term contracts, copies of the contract form, which contain all the relevant information, are made available to the end users concerned to enable them to request the placing of orders.*
- *Orders are placed on the basis of the contract.*
- *Orders placed may not be cancelled without the prior approval of the relevant AO or delegated authority, supported by a recommendation of the SCMU.*

4.2.4.4 Where orders are placed without the necessary authorization, these expenditures are classified as irregular expenditure.

4.2.4.5 When an order is issued to a supplier, a binding contract has been established.

4.2.4.6 Where a contract has been awarded to more than one contractor, the contract form will mention that more than one contractor has been accepted for a particular item and that the Municipality reserves the right to purchase its requirements, in accordance tot the general and/or special conditions stipulated in the contract or tender document via orders, from the most convenient, most suitable or most economical source.

4.2.5 PLACING ORDERS NEAR THE END OF THE CONTRACT PERIOD

POLICY

4.2.5.1 Placing orders near the end of the financial year in order to spend unused funds in the budgets are not allowed.

4.2.5.2 The obtaining of requirements must be restricted to what is absolutely necessary.

4.2.6 CONTRACT MONITORING

POLICY

4.2.6.1 Constant monitoring is essential to ensure that contractual obligations are met and that contracts run with as little disruption as possible.

4.2.6.2 The SCMU is responsible for notifying the user division timely of term contract expiry that will allow the user division sufficient time to decide whether to renew the contract.

4.2.6.3 The user division must ensure that the contractor performs according to the stipulations of the contract in delivering the goods or services on time, in the correct quantity and to the required standard and implement retention provisions where applicable.

4.2.6.4 Regular meetings with contractors to discuss progress, deliverables, foreseeable problems and/or amendments must be held during the contract period.

OPERATIONAL

4.2.6.5 The SCMU must ensure:

- The contract is structured in such a way as to allow the easy monitoring thereof on a deliverable basis.
- A set-up meeting during which it is confirmed how the contract would be monitored.

4.2.7 NON-CONTRACTUAL PURCHASES

POLICY

4.2.7.1 Small quantities of supplies or minor services may be procured outside of the contract in the following circumstances:

- In cases of emergency; or
- When the contractor's point of supply is not situated at or near the place where the supply or service is required; or
- If the contractor's supplies or services are not readily available; or
- As per the Municipal social relief policy.

4.2.7.2 Purchases outside the contract must be restricted to requirements that are absolutely necessary to satisfy the immediate requirement and the action must always be justifiable against the contract conditions.

4.2.7.3 Acquisitioning procedures must in all instances be followed when procuring outside of existing contracts**.**

4.2.8 PAYMENTS

MFMA section 65(2)

POLICY

4.2.8.1 Under normal circumstances payment is made for supplies in accordance with the contract conditions only after they have been delivered and, where applicable, installed, in good working

order, within 30 days or such timeframe as contractually agreed.

PRINCIPLES

4.2.8.2 Sound cash management include avoiding pre-payment or advance payment for goods/services (i.e. payments in advance of the receipt of the goods/services), unless required by the contractual conditions.

4.2.8.3 Where a contractor requires an advance payment or a progress payment and this is not a contract condition, payment may be made only with the prior approval of AO.

4.2.8.4 The conditions for advance payment would normally have to include a letter of credit from the supplier as a counter commitment to the advance.

4.2.8.5 Payments must be made within 30-days after it is due as per section 65(2) of the MFMA

4.2.8.6 Consultants, including construction and infrastructure related services, must only be remunerated at the rates equal to or below those:

a) determined in the "Guidelines on fees for audits done on behalf of the Auditor-General South Africa", issued by the South African Institute of Chartered Accountants (SAICA);

b) set out in the "Guide on Hourly Fee Rates for Consultants", by the Department of Public Service and Administration (DPSA); or

c) Prescribed by the body regulating the profession of the consultant.

d) At a rate determined fair or equitable by the Accounting Officer and agreed upon by both parties.

Travelling and subsistence costs for the appointment of consultants must be in accordance with the travelling and subsistence policy of the municipality and the contract price should specify all travelling and subsistence costs.

4.2.1 OVER/UNDER DELIVERIES

POLICY

4.2.1.1 Over- or under-deliveries may be accepted in accordance with the AO's delegated powers

OPERATIONAL

4.2.1.2 Large over-deliveries may be accepted, provided the discount to be received for the larger quantities has been satisfactorily negotiated with the supplier.

4.2.2 DISCOUNT ON INVOICES

POLICY

4.2.2.1 In cases where a discount is not a contract condition and a contractor indicates a discount on his invoice, this discount must be utilized if possible, for instance by making payment within the time limit specified on the invoice. However, orders must at all times be placed in accordance with the contract conditions, i.e. non-contractual discounts must not be taken into consideration when placing orders.

4.2.3 INSOLVENCY, LIQUIDATION, DEATH, SEQUESTRATION OR JUDICIAL MANAGEMENT OF CONTRACTORS

POLICY

4.2.3.1 In terms of paragraph 26 of the GCC, the Municipality has certain options, which it may exercise in the case of insolvency.

4.2.3.2 The risk to the Municipality is the determining factor and the choice with the smallest degree of risk is preferred.

OPERATIONAL

4.2.3.3 ***Insolvency or bankruptcy*** is the failure/inability to meet financial obligations. An act of insolvency is any of the eight actions as described in the Insolvency Act whereby a guilty person subjects himself to sequestration.

4.2.3.4 ***Sequestration*** is firstly to place an insolvent debtor's estate in the hands where the Master decides on the estate and thereafter it rests with the trustee that distributes the assets (money) among the creditors or, secondly where the court determines insolvency.

4.2.3.5 ***Liquidate*** is to determine and settle/wind up the liabilities of a firm or an estate and to distribute the assets to creditors or inheritors'.

4.2.3.6 ***Judicial management*** is the temporary management of a company, in a state of financial difficulty, by a judicial/legal manager appointed by the court to rectify the matter.

4.2.3.7 When the estate of a contractor is liquidated for whatever reason, a choice must be made in consultation with legal advice of whether to claim against the estate or not. The risk to the Municipality is the determination factor and the choice with the smallest degree of risk is preferred.

4.2.3.8 If a firm or person is liquidated and cannot further honor its commitment, it is regarded as a breach of contract. The provisional liquidator or administrator is given the choice of carrying out the contract or not. In most cases, the response is negative and a provisional claim against the estate is then registered and must be qualified to the extent that the Municipality will claim provided that it does not have to make a financial contribution.

4.2.3.9 A procuration must be signed in terms of which the liquidator may act on behalf of the Municipality.

4.2.4 TRANSFER OR CESSION OF CONTRACTS

POLICY

4.2.4.1 The contractual conditions should stipulate the conditions under which transfers/cessions shall be considered and the process to be followed in such circumstance.

OPERATIONAL

4.2.4.2 The SCMU in conjunction with the user division shall deal with transfers/cessions.

4.2.4.3 The contractual conditions should stipulate the conditions under which transfers/cessions shall be considered and the process to be followed in such circumstance.

4.2.4.4 Applications for the transfer/cession of contracts must be completed and signed by both the transferor and the transferee and countersigned by two witnesses. Full reasons for the transferring of the contract must be provided and the transferee's ability to carry out the contract

must be established and reported to the AO or the delegated authority. Unless it is otherwise in the best interest of the Municipality, it is unlikely that the transfer will be approved if the Municipality would suffer a loss as a result thereof or if there is an increased risk to the Municipality.

4.2.4.5 Should the contract be transferred to another provider, it should be checked whether the number of preference points scored are less than that scored by the original contractor. Thus it should be indicated if the transfer would have had an influence on the original award of the contract. However the circumstances leading to the transfer must be pointed out and taken into consideration.

4.2.4.6 The contractor will raise the issue with the user division in writing where after the user division must comment of the viability of the transfer/cession and submit the request to the SCMU.

4.2.4.7 If the transfer/cession is not viewed favorably for a justifiable reason, the SCMU must inform the contractor of the decision in writing and provide the user division with copies of the correspondence for filing purposes.

4.2.4.8 If the transfer/cession is viewed favorably, the SCMU may involve legal assistance for the purpose of drawing up the transfer/cession documentation if necessary. The SCMU must facilitate the signing of the transfer/cession by all parties, must forward a copy to the user division and the contractor and must file the original signed transfer/cession documentation appropriately.

4.2.5 TRANSFER OF CONTRACT PAYMENTS

POLICY

4.2.5.1 Transfer of payments may be considered in cases where a contractor makes application on an official letter signed by the CEO, or any other authorized person, for monies due to the contractor, to be paid to another person or organization, such as a bank or supplier of materials.

4.2.5.2 Contract payments may be transferred on the recommendation of the Municipality and with the relevant Accounting Officer's or delegated authority's approval only.

4.2.5.3 Written confirmation must be obtained from the contractor as requests for transfer of payment received from another person or organization cannot be considered favorably.

4.2.5.4 Every application must be dealt with on its own merits. Favorable consideration will result only where it is not to the detriment of the Municipality and will not result in an undue administrative burden for the Municipality.

OPERATIONAL

4.2.5.5 Great circumspection must be used in dealing with such applications.

4.2.5.6 When the request is received from a contractor's supplier, bank, attorney or any other organization, written confirmation must be obtained from the contractor first.

4.2.5.7 After approval has been received for the transfer of the payments, the user division must be informed and the payment division advised of the new payment requirements and requested to make payments accordingly.

4.2.5.8 At the same time the contractor must be advised that any receipt issued by the transferee will serve

as proof of payment of the amount concerned to the contractor.

4.2.5.9 Although the transfer of payments is regarded as undesirable, every application must be dealt with on its own merits.

4.2.5.10 Favorable consideration will result only where it is not to the detriment of Municipality and will not result in an undue administrative burden for the Municipality.

4.2.5.11 In the case of certain commodities and services, such as rented equipment, transfer of payment is often required because the contract has been discounted to a bank, sometimes without the knowledge or approval of the client concerned. Such action is unauthorized and is tantamount to a breach of contract. The Municipality is not compelled to honor such a transfer of payment.

4.2.6 CONTRACT VARIATIONS/AMENDMENTS

Refer to MFMA circular 62 of 2012

POLICY

4.2.6.1 Contracts may be amended/varied/modified according to the AO's delegated powers to achieve the original objective of the contract.

4.2.6.2 Amendments may not materially alter the original objective; as such amendments should form part of a new bid invitation.

4.2.6.3 All contractual parties must agree to the amendment in writing.

4.2.6.4 No contract can be amended after the original contract has ceased to exist.

4.2.6.5 The extension of a contract shall be finalized before the current expiry date of the contract.

4.2.6.6 Where prices are amended for the extended period, the reasonableness of the prices must be established.

OPERATIONAL

4.2.6.7 When an item on contract is no longer available and another item has to be substituted, this implies an amendment of the contract. Such an amendment must be submitted to the relevant delegated authority for approval. When a contractor is no longer able to supply a contract item and he offers a substitute, which is more expensive, the amendment is to the disadvantage of the Municipality unless the substitute item offers additional benefits which can be utilized by the Municipality and which justify the additional cost. If not, the AO's or delegated authority's approval must be obtained.

4.2.6.8 For the appointment of consultants, any granting of a substantial extension of the stipulated time for performance of the contract, agreeing to any substantial amendment of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 %, will be subject to the approval of the AO or the delegated authority.

4.2.6.9 The contractual conditions should stipulate the conditions under which amendments shall be considered and the process to be followed in such circumstance.

4.2.6.10 No variation in or modification of the conditions of contract shall be made without all the parties signing the amendment.

4.2.6.11 The user division must approach the SCMU with the request for amendment. The SCMU should contact the contractor to determine whether he/she will be amenable to an amendment to the contract within the allowable parameters.

4.2.6.12 If the contractor is prepared to amend the contract and it is confirmed in writing, the SCMU shall process the amendment and supply the user division with the details of the amendment.

4.2.6.13 The SCMU must involve legal assistance for the purpose of drawing up the amendment, if required.

4.2.6.14 The SCMU must facilitate the signing of the amendment by all parties.

4.2.6.15 A signed copy must be forwarded to the user division and the contractor and the SCMU must file the original signed amendment appropriately.

4.2.7 INCREASE/DECREASE OF QUANTITIES OR RANGE OF SERVICES

OPERATIONAL

4.2.7.1 Before calling for bids, care must be taken to establish the quantities / range of services required as reliably as possible so that the need to increase / decrease quantities / range of services during the contract period may be kept to the minimum.

4.2.7.2 Quantities / range of services may be decreased provided consensus exists between the Municipality and the contractor and the unit prices remain unchanged.

4.2.7.3 After the original or officially amended quantities / services for which the contract was arranged, have been delivered, the contract ceases to exist. It is then no longer possible to purchase further items / services on the contract

4.2.8 CONTRACT EXTENSION

OPERATIONAL

4.2.8.1 Extension of contract periods is undesirable because it often leads to uncontrolled increases in the contract prices. These must therefore be restricted to the minimum.

4.2.8.2 The user division is responsible for ensuring that timely application is made to the SCMU for the arrangement of new contracts.

4.2.8.3 Where justifiable reasons are provided for extending a contract, the relevant application may be considered favorably and contractors may be approached with the request to indicate whether they are prepared to extend the contract period.

4.2.8.4 The fact that extension of contracts might affect the schedule for other contracts must also be borne in mind.

4.2.8.5 If contractors are prepared to extend the contract period, but with amended price conditions, the reasonableness of the prices must be established.

4.2.8.6 Contracts may normally not be extended beyond the period as determined by the AO's delegated powers.

4.2.8.7 The market must again be informally tested before the extended period has expired.

4.2.8.8 Any contract extension that affects the value of the contract must be channeled via the approved delegated authority for recommendation and resolution.

4.2.9 EXTENSION OF DELIVERY PERIODS

POLICY

4.2.9.1 Delivery periods may be extended according to the AO's delegated powers.

OPERATIONAL

4.2.9.2 Motivated applications for the extension of delivery periods in respect of *ad hoc* and specific term contracts may be considered favorably, but are subject to the restriction that no price adjustments, which arise during the extended period, will be considered.

4.2.9.3 Price adjustments during the extended period may only be considered favorably if the Municipality requested the extended delivery period and the approved delegated authority endorsed such extension, or when delayed deliveries are caused by the actions of the Municipality

4.2.10 AMENDMENT OF CONTRACT CONDITIONS

POLICY

4.2.10.1 Amendments may be considered on their merits bearing in mind the best interest of the Municipality.

4.2.10.2 Amendments, which prejudice the Municipality, can be agreed to only with the approval of the relevant delegated authority on recommendation of the Bid Adjudication Committee.

4.2.11 AMENDMENT OF SPECIFICATIONS

POLICY

4.2.11.1 Where a binding contract has been concluded, an amendment of the specification whether initiated by the contractor or by the Municipality, can be made only after negotiation between the contractor and the Municipality and through the facilitation of the SCMU.

OPERATIONAL

4.2.11.2 Each case for the amendment of specifications must be dealt with on its own merits.

4.2.11.3 Account must be taken of the fact that the contractor has a right of recourse against the Municipality if specifications have to be amended as a result of a mistake by the Municipality. It is essential therefore that a settlement is reached with the contractor.

4.2.12 CONTRACTUAL PRICE ADJUSTMENTS

POLICY

4.2.12.1 The contractual conditions shall stipulate the circumstances under which price adjustments shall be considered, the intervals for adjustment, the base date for adjustments as well as the price adjustment formula and the process to be followed in such circumstances.

4.2.12.2 In cases of term contracts, price adjustments shall be considered on a quarterly basis and this condition shall be indicated in the bid document.

4.2.12.3 No price adjustments should preferably be considered for a contract period less than twelve (12) months.

4.2.12.4 The prescribed formula will be used for adjustment of prices due to the fluctuation of the indices.

4.2.12.5 Indices compiled by Statistics South Africa will be used for price adjustments.

4.2.12.6 Rate of Exchange (ROE) fluctuations are only allowed on the imported content of the commodity.

OPERATIONS

4.2.12.7 In cases where the user division received a request for price adjustment from the contractor, the request must be immediately forwarded to the SCMU for facilitation.

4.2.12.8 The SCMU is responsible for confirming that the request is in line with the contractual conditions and will verify the calculations presented.

4.2.12.9 Once the request is accepted as correct and approved by the official with the necessary delegated authority, the SCMU will inform the contractor in writing and will inform the user and the finance divisions of the approved amendment to demonstrate the influence of the change on the contract.

4.2.12.10 The SCMU must file the amendment with the original contract.

4.2.12.11 Contractual price adjustments are considered in terms of the contract conditions.

4.2.12.12 Since the GCC does not set out conditions pertaining to price increases, it is important that all bid documentation will contain the relevant special conditions pertaining to price increases.

4.2.12.13 The following will be used for pricing schedules:

- ***Firm prices for purchases and during the contract period –***

  (i) A customs or excise duty or any other duty, levy or tax, or

  (ii) Any such duty, levy or tax which was legally changed or abolished;

  the said prices shall be adjusted accordingly.

- ***Non-firm prices for purchases*** *- In respect of any factors which demonstrably have an influence on the production cost of the supplies or the rendering cost of the service for which there have been proposed on the basis of non-firm prices, price adjustments which become effective during the contract period, may be allowed with effect from the date indicated in the bid document. The adjustment in price shall cover only the period between the closing date of a bid and the final delivery date in terms of the contract. Claims against the Municipality shall be proved to the satisfaction of the SCMU as soon as possible.*

- ***Price adjustments due to escalation*** *- In some instances (contracts exceeding 12 months) it might be in the best interest of the Municipality to allow price adjustments based on escalation. What the best option should be will require a careful analysis of all related aspects that will influence the adjusted price, including the cost for the additional administrative work. If the Bid Specification Committee resolves to allow price escalation as part of the contract, this should be specified in the bid documents, including the formula and the time frames at which intervals such price adjustments should be considered.*

  The following formula is applicable if adjustments of prices are allowed:

$$Pa = (1-V)Pt\left(D1\frac{R1t}{R1o} + D2\frac{R2t}{R2o} + D3\frac{R3t}{R3o} + D4\frac{D4t}{D4o}\right) + VPt$$

  Where:

  - **Pa = The new escalated price to be calculated.**

- **(1-V)Pt = 85% of the original bid price. Note that Pt must always be the original bid price and not an escalated price.**
- **D1, D2 = Each factor of the bid price eg. labor, transport, clothing, footwear, etc. The total of the various factors D1, D2…etc. must add up to 100%.**
- **R1t, R2t = Index figure obtained from new index (depends on the number of factors used).**
- **R1o, R2o = Index figure at time of bidding.**
- **VPt = 15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.**

➢ **Price adjustments due to fluctuation in the rate of exchange -**The price adjustments based on ROE fluctuations, should be allowed only on the imported contents of the commodity to meet only the suppliers' additional costs of the imported content. Where the whole or a portion of the bidding price may be affected by the revaluation of currencies or any fluctuation in the ROE, the bidder shall, in accordance with the bidding requirements, state in his bid the amount to be paid in foreign currencies or to be remitted abroad, as well as the rate of exchange applied in the conversion of that amount into South African currency in calculating the bid price. All rate of exchange claims shall be accompanied by proof from the bank of the existing exchange rate.

4.2.12.13.1 NON-CONTRACTUAL ADJUSTMENT OF PRICES

POLICY

➢ Non-contractual adjustment of prices is normally not allowed.

OPERATIONAL

➢ When contractors suffer a loss as a result of their own negligence, price adjustments not covered by the contract are not favorably considered. However, where a contractor suffers loss as a result of circumstances beyond his control, or as a result of incorrect action by the Municipality and particularly when such loss might cause his downfall, non-contractual price adjustments may be considered by the Municipality. Such adjustments are to the disadvantage of the Municipality and the necessary AO or delegated authority approval must be obtained.

4.2.12.13.2 REDUCTION OF PRICES

POLICY

➢ The Municipality must accept price reductions after award of a contract where this is advantageous to the Municipality, unless the acceptance of the price reduction amounts to breach of contract.

4.2.21 UNSATISFACTORY PERFORMANCE AND CONTRACT TERMINATION

POLICY

4.2.21.1 The Municipality should continuously communicate unsatisfactory performance to contractors in writing compelling the contractor to perform according to the contract and thus to rectify or to restrain from unacceptable actions.

OPERATIONAL

4.2.21.2 UNSATISFACTORY PERFORMANCE: THE MUNICIPALITY's ROLE

General

- Unsatisfactory performance occurs when performance is not in accordance with the contractual conditions. Directives regarding action in such cases appear in paragraphs 15, 21 to 23, 26 and 28 of the GCC.
- The user division must timely identify unsatisfactory performance in terms of the contract.
- The SCMU must, in consultation with the user division and legal assistance if required, bring unsatisfactory performance to the attention of the contractor in writing. Also apply the *audi alteram partem* rule in the management of unsatisfactory performance. The SCMU shall give notice to the contractor of action to be taken in line with the contract due to non-performance.
- If the performance is not rectified, the user division must inform the SCMU of this fact.
- Before action is taken in terms of the GCC or any other special contract condition applicable, the Municipality must warn the contractor by registered mail or formal e-mail on an official letterhead that action will be taken in accordance with the contract conditions unless the contractor complies with the contract conditions and delivers satisfactory supplies or services within a specified reasonable time.
- If the contractor still does not perform satisfactorily despite a final warning, the Municipality may make a recommendation to the AO or the delegated authority for the appropriate penalties to be introduced or make a recommendation to the AO for the cancellation of the contract concerned.
- When correspondence is addressed to the contractor, reference must be made to the contract number, the item number and the number and date of any relevant invoice, statement or letter received from the contractor.
- When the Municipality has to satisfy its need through another provider (for the contractor's expense), the loss to the Municipality must always be restricted to the minimum since it is difficult to justify the recovery of unreasonable additional costs from the contractor.

Warrantees

- If, during the warranty period, goods do not comply with the requirements because of faulty material used during manufacture, or faulty finishing, or any deficiency, latent or otherwise, the contractor must be requested without delay, by registered mail or email, to replace or repair the goods depending on the circumstances.
- Supplies replaced or repaired or services rendered must be warranted for the same period as the original supplies or services. See paragraph 15 of the GCC in connection with warrantees.
- If rejected supplies are in the possession of the Municipality, the contractor must be requested to indicate, within a given time limit, how these must be disposed of and warned that if he/she does not react to the request, the supplies will be returned to him "railage to pay". If he ignores the request, the Municipality must act accordingly.

Late deliveries

- Par 10 of the GCC states that delivery of supplies or services shall be made in accordance with the

conditions specified in the contract.

- Before action due to late delivery is instituted against a contractor who has offered a firm delivery period, the circumstances under which the late delivery took place must be investigated. There may be valid reasons for the late delivery, which are beyond the control of the contractor, in which case action cannot be taken summarily against the contractor.
- On the other hand, contractors must not be allowed to delay deliveries repeatedly even where non-firm delivery periods have been offered. Wherever possible, firm delivery periods must be insisted upon before a bid is accepted, as well as when the issue of late deliveries crops up during the period of a contract.

Penalties for late delivery

- See par 22 of the GCC. Penalties are not intended as a source of income for the Municipality, but serve as an incentive to the contractor to perform within the contractual conditions.
- Circumstances exist where penalties cannot be imposed summarily. Late delivery must, however, be thoroughly investigated and action taken where necessary. Therefore, the Municipality have discretionary powers in this respect.
- Where an unreasonable delay occurs, the Municipality must address a written warning to the contractor by registered mail or email, setting a cut-off date (usually two weeks from date of warning) and warn him that the penalty clause will be applied if the order is not executed before the cut-off date.
- If he does not heed the warning, the penalty clause must be applied and the action reported to the Accounting Officer.
- Where firm delivery periods are applicable and late delivery occurs, penalties do not have to be imposed where no damage, loss or inconvenience has been suffered by the Municipality.
- In the following cases penalties for late delivery must be imposed:
  (i) Where deliveries within a particular time period (service) were a specific contract condition and where delays caused serious damage, loss or inconvenience to the Municipality.
  (ii) Where a firm delivery period (supply) was a contract condition and where delays caused serious damage, loss or inconvenience to the Municipality.
- Penalties are imposed on the outstanding portion of the order only if beneficial use of the completed portion of the supply or service is possible. Otherwise penalties are imposed on the full value of the order. Penalties are calculated as from the contractual date of delivery or such extended delivery date mutually agreed to in writing by the contracting parties.
- Contractors may appeal against the deduction of monies in respect of penalties, or the initiation of claims as a result of late deliveries. The contractor may escalate the case where agreement cannot be reached between the Municipality and contractor.
- If a contractor successfully appeals against the deduction of monies as a penalty, such monies must be repaid to him without delay.

Legal remedies in the case of incorrect preferences

- If a contractor should win a contract on the basis of wrong information which was supplied regarding

the preferences which he has claimed, and it is shown later that the information is incorrect, then the AO has the power to:

(i) Recover any costs or damage which the Municipality might have suffered as a result of the conclusion of the contract; and/or

(ii) Terminate the contract and to recover any loss which Municipality may suffer as a result of having to make less favorable arrangements; and/or

(iii) Deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. A written notice to the effect shall be issued to the contractor by registered mail.

(iv) The relevant Treasury must be informed when such cases come to light so that they may decide on further suitable action.

4.2.22 RESTRICTION

Refer to MFMA section 112 (1) (m&n) and SCM TR 43 & 44

POLICY

4.2.22.1 The Municipality may in terms of SCM Treasury Regulations 43 & 44.

4.2.22.2 Disregard the bid of any bidder if that bidder, or any of its directors-

- Have abused the Municipality's SCM system;
- Have committed fraud or any other improper conduct in relation to such system; or
- Have failed to perform on any previous contract; and
- Must inform the relevant Treasury of any action taken in terms of the aforementioned paragraph.

4.2.22.3 Irrespective of the procurement process followed, no award may be made to a person:

- Who is in the service of the state;
- If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- A person who is an advisor or consultant contracted with the Municipality

4.2.22.4 The Accounting Officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous 12 months, including:

- The name of that person;
- The capacity in which that person is in the service of the state;
- The amount of the award.

PRINCIPLES

4.2.22.5 In terms of the Prevention and Combating of Corrupt Activities Act, only the National Treasury is empowered to impose restrictions on providers who were found guilty by a court of law for criminal offences related to

public sector bids.

4.2.22.6 The Municipality may restrict or refuse bids as stated in the regulation above. The difference being that the restriction is not placed by a court of law.

4.2.22.7 When considering restriction, the Municipality must ensure that all the facts are made available to all role players and the National Treasury is fully informed of the person or organization's reactions to the warnings that must have been issued.

4.2.22.8 Furthermore, care must be taken that the prescribed procedures have been followed, since the court may find that an administrative action, such as the imposition of a restriction, is not valid in cases where the person or organization, for example, has not been given a reasonable time to put the other side of the case, or has not been fully informed of the results of his failure to react.

4.2.22.9 It is also possible that, where contradictions or ambiguities exist, the court will give the benefit of the doubt to the persons or organizations against whom a restriction has been imposed and may pass judgment in their favor.

4.2.22.10 The register of restricted persons or companies prohibited from doing business with the public sector, found guilty by a court of law is obtainable from the National Treasury's database.

4.2.22.11 The challenge of not being privy to a database of public officials as employed in terms of the PSA and the fact that there is no database in place is respect of officials employed by Municipalities in the National domain makes this requirement impractically and administratively burdens them.

4.2.23 CONTRACT TERMINATION

POLICY

4.2.23.1 The Municipality must cancel a contract awarded to a supplier of goods of services:

- If the supplier committed any proven corrupt or fraudulent act during the bidding process or the execution of that contract.
- If any official or other role player committed any proven corrupt or fraudulent act during the bidding process or the execution of that contract that benefited the supplier.

4.2.23.2 Termination of a contract may be considered for a variety of reasons, as stipulated in paragraphs 21.6, 23 and 26 of the GCC, such as delayed deliveries, failing to perform any other contractual obligation or if the supplier has engaged in corrupt and fraudulent practices and insolvency.

4.2.23.3 Contract termination may be effected if allowed for in the contractual conditions and if both parties agree to the termination in writing.

OPERATIONAL

4.2.23.4 Contract termination required by the Municipality due to non-rectified breach of contract or corruption, shall always be initiated by the SCMU in consultation with the user division and legal assistance where required.

4.2.23.5 The SCMU shall forward a notice of termination to the contractor and the user division must be kept informed of the actions taken.

4.2.23.6 If the contractor does not agree with the termination, the case must be handed over to legal assistance.

4.2.23.7 Termination of a contract is usually detrimental to the Municipality. Therefore serious thought must be given to the grounds for considering termination.

4.2.23.8 Clarity must be reached beforehand on the question of whether the contractor will have a claim against the Municipality or not, and if so, whether termination can be justified.

4.2.23.9 If termination is decided upon, the matter must be explained fully in a memorandum to the Accounting Officer and the following must be addressed:

- Indicate the arrangements to be made for completing the contract.
- Indicate whether additional costs will be recovered from the contractor.

4.2.23.10 If the additional costs cannot be determined precisely, a careful estimate of it must be made and mentioned in the submission to the AO.

4.2.23.11 Any claim for the recovery of additional costs must be limited to the minimum actual amounts. Therefore, in such cases, the Municipality cannot summarily authorize purchasing to the best advantage of the Municipality, since this might prejudice the recovery of the additional costs from the original contractor.

4.2.23.12 There may be other avenues of action, which might result in lower additional costs.

4.2.23.13 Thought must also be given to the possibility of considering the next lowest acceptable bid received in response to the particular bid invitation, for acceptance.

4.2.23.14 As an alternative, a fresh contract may be concluded through the normal bid procedures. In this process, account must be taken of the time elapsed between the closing of a bid and the cancellation of the contract and the effect of the cancellation on the Municipality' schedules.

4.2.24 CONTRACTS REPORTING QUESTIONNAIRE: NATIONAL TREASURY

POLICY

4.2.24.1 The Municipality shall submit reports to National Treasury in respect of each contract concluded during that month within 15 days of the end of each month to enable the Minister of Finance to report to Cabinet and Parliament on progress made.

OPERATIONAL

4.2.24.2 The reporting questionnaire must be submitted for all contracts within 15 days of the end of each month for that month.

4.2.24.3 It is also recommended that the reporting questionnaire should be completed as and when each contract is concluded in order to ease the workload that may result if it is completed only at the end of the relevant month. See National Treasury's Practice Note Number SCM 3 of 2004 for the template.

4.2.24.4 The information will be audited by the Auditor-General to monitor compliance.

4.2.25 CONTRACTOR ASSESSMENT

PRINCIPLES

4.2.25.1 The Municipality must ensure that the performance of all contractors is assessed during the period of the contract.

4.2.25.2 At the completion stage of the project/contract, an assessment of the contractor shall be undertaken and this assessment should be available for future reference.

4.2.25.3 The reliability of the contractor should be monitored in terms of, among others:

- Capacity and capability to deliver (delivery periods).
- Quality.
- Quantity.
- Attainment of objectives.
- Other criteria determined by the Municipality (such as availability of facilities, reliability, flexibility, price, financial stability, response time, technical competence, creativity and innovation) should also be monitored.

4.2.25.4 Contractors shall be systematically monitored for performance against the same criteria as those used in the registration process for the provider list or the criteria set in the specification/terms of reference, where applicable. In other words was the contractor (chosen from a provider list or a bidding process) able to perform according to the contract conditions.

4.2.25.5 When contractors do not perform according to the contractual obligations and the Municipality does not address the matter during the execution of the contract, such non-performance cannot be deemed as sound reasoning for passing over the bid of such supplier/service provider when evaluating future bids.

4.2.25.6 It is important that all instances of breach of contract and the ensuing actions that were taken must be recorded in a prescribed format so that management information can be extracted for reporting purposes, as required.

4.2.26 CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER

PRINCIPLES

4.2.26.1 If a service provider acts on behalf of a Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the Municipality must stipulate:

- a cap on the compensation payable to the service provider; and
- that such compensation must be performance based.

VOLUME5: LOGISTICS MANAGEMENT

PART 5.1: LOGISTICS MANAGEMENT

5.1.1 GENERAL

Refer to section 39 of the MFMA

POLICY

5.1.1.1 The primary function of a store is the receiving, storing, preserving as well as the issuing of store items.

5.1.1.2 It is essential that equipment or stock be stored in such a way that the possibility of loss, damage, exposure, deterioration or perishing thereof is minimized or eliminated completely. By lack of a physical store, the function must still be performed.

5.1.1.3 Duplicate keys of all lockers, cabinets, padlocks and other storage areas should be readily available and shall be controlled by a responsible delegated official.

5.1.1.4 Logistics management includes:

- The monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
- The setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- The placing of manual or electronic orders for all acquisitions other than those from petty cash;
- Before payment is approved , certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- Appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- Regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- Monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

5.1.2 INVENTORY MANAGEMENT

POLICY

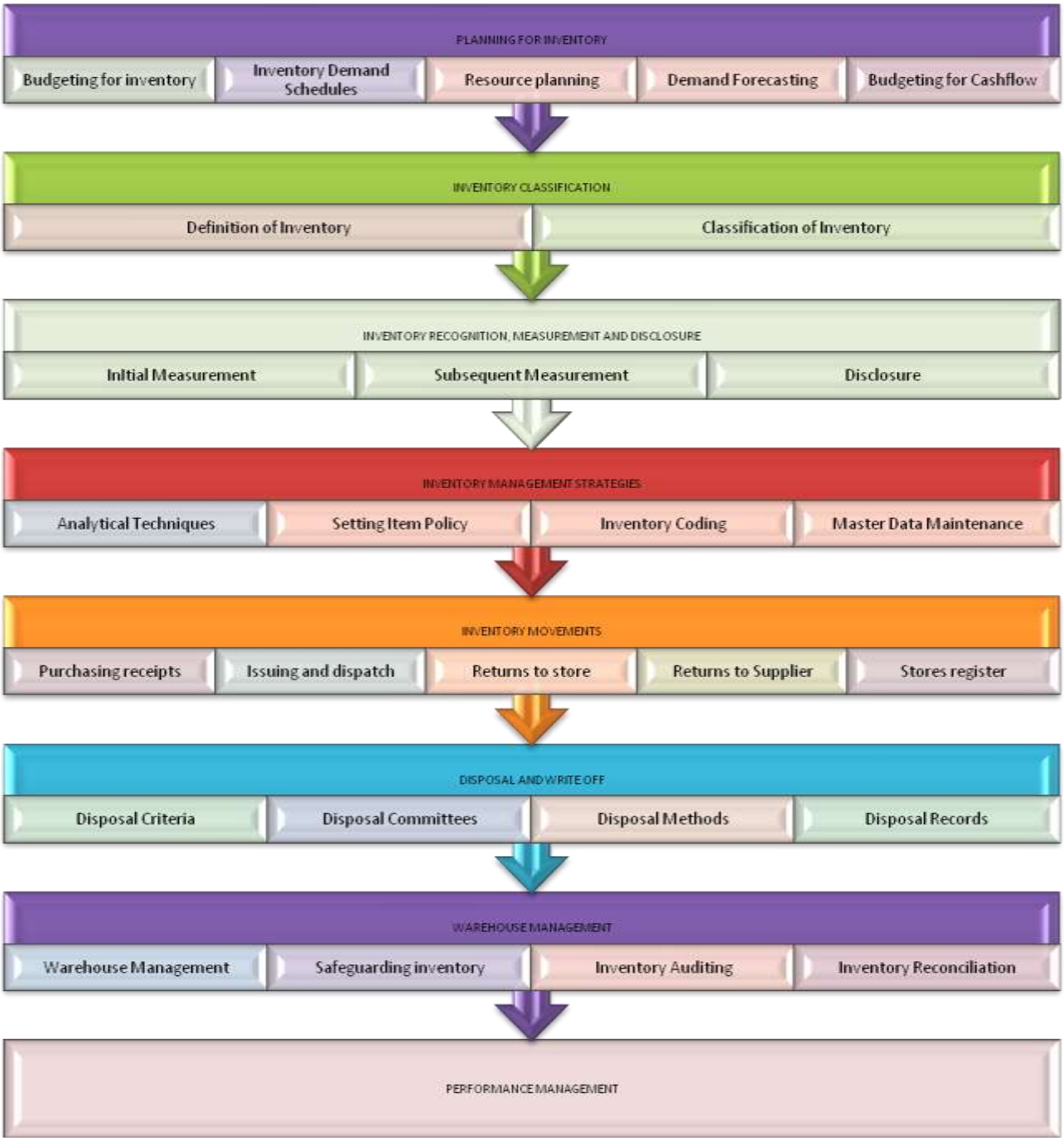
5.1.2.1 In cases where storage space is very expensive or not available, the just-in-time delivery principle must be used.

5.1.2.2 Minimum and maximum order levels for all store items shall be determined based on the usage, the lead and delivery times.

PRINCIPLE

The following graph depicts the generic inventory management processes:

Graph 5.1.2: General inventory management process:



5.1.2.3 **REQUISITION**

POLICY

- Stock items must be systematically replenished using the re-order point planning strategy in conjunction with minimum and maximum levels.
- Procurement processes may differ between goods and services and in some cases a process for emergency procurement may be necessary.

OPERATIONAL

- A written requisition or quotation initiation form should be completed for approval and in order to

insure that the procurer is clear as to the requirements.

- Stores RequisitionObjective:
  (i) Only authorised requisitions are processed;
  (ii) Segregation of duties between requestor and approver; and
  (iii) Changes to Item catalogues are subjected to the change control procedure.
- Outcome:
  (i) An adequate system of controls exists to ensure that request for inventory are valid, reviewed and authorised.
  (ii) The correct quantity of items is received at the right time and at the right place.
- Cost Centre prepares request for inventory item:
  (i) Delegated employee/practitioner selects items from the Inventory Catalogue;
  (ii) Delegated employee/practitioner completes a request form for inventory Items; and
  (iii) The request form should contain at least the following information:
    - Cost Centre Description (and Number if there is a system in use)
    - Date of Request
    - Item unified stock keeping code
    - Item unified description
    - Quantity Required
- Authorise request for inventory item.
  (i) The Delegated employee/practitioner will:
    - Verify the information to ensure that it is a valid request;
    - Approves the request or captures the request form on the system in use; and
    - If no system in use the delegated employee/practitioner will Register the request in a register to keep record of the requests from cost centers.
- Confirm Requisitions.
  (i) The delegated employee/practitioner in the warehouse verifies the request form as follows;
    - Check if the submitted documents are duly completed.
    - Check if the Request is signed/approved by the delegated employee/practitioner.
    - Check if item descriptions are complete;
    - Verify that the item is on the Inventory Catalogue and can be issued from the warehouse

5.1.2.4 **PLACING OF ORDERS**

POLICY

- Purchase orders must be in reference to the requisitions where the supply source is either –
  (i) Contract; or
  (ii) Quotations.
- Purchase orders for imported goods and which are subjected to rate and exchange adjustments must

specify that the vendor must take out a forward exchange contract in order to fix the Rand based price in the purchase order.

OPERATIONAL

- Purpose - place approved orders for goods/ services with suppliers appointed through relevant procurement process
- Supply Chain Management Unit responsible for ordering
- Order should be cross-referenced to requisition and checked for accuracy and authority
- Performance specifications communicated to suppliers as part of ordering process
- SCM Unit monitor supplier against specifications
- Where contract exists – order placed in line with contract otherwise in breach of contract
- No contract – proper bidding process to be followed.

5.1.2.5 **RECEIVING GOODS**

POLICY

- Goods are received on the logistical system with reference to purchase orders.

OPERATIONAL

- All goods received by suppliers/vendors should be verified against the purchase orders or contracts that initiated them.
- The following should be checked on delivery:
  (i) Quality and any signs of damage.
  (ii) Quantity.
- In order for payments to be made after receipt of goods, a documented record of goods received and checked is required.
- Accept goods and acknowledge receipt
- Compare goods to delivery note and order – ensure goods with valid orders are accepted
- Copy is filed appropriately
- Deliveries carefully examined before delivery notes are signed
- Damage/ short delivery
- Investigated immediately
- Particulars endorsed on delivery and goods received notes
- Completed goods received note and signed delivery note sent to Finance unit to initiate payment

5.1.2.6 **RETURNING GOODS**

POLICY

- Manage the return of goods and related third party claims.

PRINCIPLES

- Return goods and manage third party claims.
- Implement the return of goods.

OPERATIONAL

- Administer the return of goods activities.

5.1.2.7 GOODS DISTRIBUTION

PRINCIPLE

- Buy-out items received in transit area – transferred to end user
- End user signs if satisfied with delivered item - Forms part of payment package
- Inventory items – send to end user
- End user sign receipt on issue voucher

OPERATIONAL

- Goods will be issued with reference to reservations. Goods can be used for consumption against internal orders, cost centres, projects and assets under construction.
- Issuing of any items must be recorded as an issue note to confirm the authority for issuing, act as a pick note by the issuer and sign for on receipt by the receiver.
- Distribution Channels

(i) The relevant manager must identify the optimum distribution channel throughout the supply chain to ensure that goods are moved or transported effectively and efficiently between the supply and demand locations;

(ii) When the relevant manager decides on the type of distribution channel he/she must consider the following criteria:

- Identify Intermediaries (i.e. transit, stores) as they can increase the efficiency of the distribution channel by creating time, place and possession benefit to the end user (i.e. at the right time and right place). Intermediaries reduces some or all of the following costs:
- Transportation costs (fewer but larger volume shipments); and
- Inventory carrying costs;
- Storage costs; and
- Order processing costs.

5.1.2.8 WAREHOUSE MANAGEMENT

POLICY

- Warehousing must be provided for and located in areas appropriate to where depots are situated.
- The Supply Chain must ensure for-:

(i) Proper financial and budgetary control.

(ii) Uphold the principle of effective administration.

(iii) Proper stock holding and control.

(iv) Product standardization.

(v) Quality of products.

(vi) A high standard of service levels.

OPERATIONAL

- Document proper storage methods to ensure that the procured items do not deteriorate whilst in storage.
- Implement additional storage methods for those items that are of a hazardous nature such as flammable chemicals, poisons and explosives.
- Examples of methods that are required to be documented:
  - (i) Handling.
  - (ii) Storage.
  - (iii) Packaging.
  - (iv) Preservation.
  - (v) Delivery as appropriate to the item.
- Issuing of any items must be supported by a documented record as an issue note.
- Update stores systems from this issue note.
- Periodic stocktaking should take place at least annually.
- No over deliveries will be accepted into any warehouse/storeroom if the delivered quantity exceeds the Over Delivery Tolerance Limit of the respective purchase order.
- No packaging or material that displays any visible damage / fault must be received into any warehouse/storeroom unless approved by the warehouse/storeroom manager. Should there be an emergency requirement or the driver cannot remain, the delivery note will be noted "Received pending investigation" and the damage described or a picture taken of the damages where possible.
- The receiver must confirm the following information on the purchase order against the actual delivery:Supplier:
  - (i) Description of item being delivered; and
  - (ii) Quantity of Items being delivered
- Material that does not conform to the specifications and description issued by the buyer on the purchase order must not be accepted and received based on the visual inspection;
- The goods receipt procedure must be completed on the inventory management system within 24 hours and balanced, i.e. the quantity of delivery notes vs. the quantity of goods receipt slips must balance;
- All received material that must be Quality Inspected, must be stored in the designated inspection staging area pending the Quality Inspection ("QI") procedure;
- The goods received note made out at the transit area must be signed by the warehouse/store manager or the relevant delegated authority as well as the person delivering the goods on behalf of the supplier;
- The completed goods received note and signed delivery note must be sent to the SCMU to initiate payment;
- All scheduled deliveries have their relevant order information located at the receiving area;
- Appropriate segregation of duties must exist between receiving/issuing, and approval of stock adjustments;
- The transit area is not to be treated, as a warehouse/storeroom. Store items received in the transit area

must not, if practical be left there for longer than 48 hours;

- Stock items must be transferred from the transit area into the warehouse/storeroom and both the inventory system and the relevant bin cards updated

5.1.2.9 **MATCHING DOCUMENTS**

POLICY

- Manage the payment voucher matching process.

PRINCIPLES

- Review payment vouchers for completeness and accuracy and report discrepancies.
- Monitor the payment voucher matching process and resolve discrepancies.

OPERATIONS

- Consolidate order, issue vouchers, delivery notes and invoices.

5.1.2.10 **PREPARATION FOR PAYMENT / ACCOUNTS PAYABLE**

POLICY

- After documented records were received, the payment process can be initiated as prescribed through the MFMA processes and delegations.

5.1.3 INVENTORY STOCK COUNT, VERIFICATION AND RECONCILIATION (INCLUDING ICN MANAGEMENT)

5.1.3.1 **STOCK COUNT AND VERIFICATION PROCEDURES**

a) PLANNING PHASE

SCM TR 39

POLICY

(i) Most important part when undertaking an inventory stock count is the planning phase. The phase must set out all the steps to be taken securing the accurate count and verification is undertaken.

(ii) Stock count should at least be done once in a financial year but could also be done on a monthly basis.

OPERATIONAL

(iii) The Expenditure unit are responsible to issue the stock take program for the financial year.

(iv) The Stock Take Team is responsible for the administrative issues of the annual stock take and verification and will prepare the detailed planning as well as any planning related to a continuous program.

(v) The Expenditure unit must plan their schedule in conjunction with the inventory count and verification program and must ensure that resources are available during this period.

b) APPOINTMENT OF STOCK COUNT AND VERIFICATION TEAM

OPERATIONAL

(i) The Head: Expenditure must appoint the Stock Count and verification team to be part of the Stock Take Team for the financial year

(ii) Appointment of all members must be in writing.

(iii) The official appointed to be the responsible person for store inventory and stock may not be responsible for the count but can only serve on the Stock Take Team as an advisor.

(iv) The Stock Take Teams plans the Inventory Stock Count and Verification and must –

- *Have access to the quantity of stock, number of cycles and accessibility of items.*
- *Determine an estimate timeframe on how much time is needed to verify all the inventory store stock.*
- *Set dates for inventory stock count and verification process.*
- *Completes an Inventory Stock Count and Verification Action Plan*
- *Organise verification schedule with dates and timeframes.*
- *Arrange verification officials into teams.*
- *Assign verification teams to cycles that need to be verified.*
- *Notify all Participating Officials of Inventory Stock count and verification process.*
- *Inform all users of the planned date and time of the verification process.*
- *Check that all issues and receipts are captured.*
- *Check that all stock is packed out and in correct quantities.*
- *Check that all stock is in proper bins.*

c) CONDUCTING ACTUAL INVENTORY STOCK COUNT AND VERIFICATION

POLICY

(i) By the end of the verification process the following outcomes will emerge:

- All physical stock in each cycle must have been counted and noted on the required reporting document.
- All officials involved in the actual verification process must initial and sign the required reporting document and must also state his/her function in the process.
- The Stock Take Team must collate all required reporting document per cycles and must ensure that all information has been recorded, signed and submitted.
- The Stock Take Team must ensure that the documentation is ready for the reconciliation process.

OPERATIONAL

(ii) Use the required report document when conducting the Inventory Stock Count and Verification.

(iii) Report must be printed for every cycle and issued to verification officials to conduct the physical count and verification

(iv) All count and verification information should be noted on the required report document.

(v) Writing must be done in black pen.

(vi) Officials must verify that the following information is correct and correspond with the stock:

- Description of stock.

- Quantity of stock.
- Bin number quantity check.
- The officials responsible for the count of the specific cycle should sign the required report document once the stock in the cycle has been counted.

5.1.3.2 **RECONCILIATION PROCEDURES**

POLICY

- The reconciliation process commences once the count and verification phase has been completed and complete count reports are available from Stock Take Team (Refer to above paragraphs 5.1.3.3).
- The control report must be printed en compared with the count report.
- Discrepancies must be listed from above mentioned process.

5.1.3.3 **TREATMENT OF DISCREPANCIES**

POLICY

- Discrepancies are the result of shortages and or surplus stock fount not equal to the quantity that appears on the control report.

OPERATIONAL

- Stock Take Team should evaluate each discrepancy individually and recommend any further steps to be taken.
- Steps may include the recovery of stock losses from responsible officials by following the loss control procedures.
- Discrepancies must be captured as soon as the investigation has been finalised.
- All particulars and supporting documentation should be kept for audit purposes.
- Surpluses could be the result of:
  (i) A receipt not captured but put into bin location
  (ii) An issue captured but not physically removed form bin location
- Shortages could be the result of:
  (i) An issue physically removed form bin location but not captured
  (ii) A receipt captured but not put into bin location.
- Shortages could also be the result of theft. In such case, the matter must be reported to the South African Police Service within 24 hours and a case number should be obtained for further investigation.
- It is the responsibility of the Stock Take Team to report the theft on discovery of theft.
- Investigations should be launched when shortages are reported. The investigations should be an internal process and a search initiated. When item is not found the case must be referred to the SAPS as a possible loss to the Municipality and loss control procedures should be followed.
- As soon as the outcome of the investigation regarding discrepancies is complete, the transactions must be captured, adjusted and the stock items corrected.
- Approval must be given by the delegated official.
- If the shortage is proven to be the official's negligence the cost of the stock must be recovered from

responsible officials and the Loss control procedures needs to be followed.

- After conclusion of the process, all documentation must be filed for the financial year for audit purposes.
- Upon finalising the inventory stock count and verification an inventory stock verification certificate must be completed by the Head of Expenditure and a copy must be sent to the expenditure unit.
- The certificate should contain at least the following:
  (i) Stock Take Team had been appointed in writing;
  (ii) A complete inventory stock count has been conducted;
  (iii) The information as provided is a true reflection of inventory stock within the Municipality
  (iv) Inventory stock count and verification process is complete.

VOLUME6: DISPOSAL MANAGEMENT

PART 6.1: DISPOSAL OF MOVEABLE ASSETS

SCM TR 40

- **POLICY**

  The AO must establish an effective system of disposal management for the disposal of assets, including unserviceable, redundant or obsolete assets, subject to section 14 of the Act, and asset transfer regulations;

- **The disposal of assets must be by one of the following methods-**
  - transferring the asset to another organ of State in terms of a provision of the Act enabling transfers
  - transferring the asset to another organ of State at market related value or when appropriate, free of charge
  - selling the asset by way of an auction or a competitive bidding process
  - destroying the asset

- The selling of items must at all times be done in a fair / competitive and scrupulous manner.
- Notice of the selling of assets must be given at least 14 days prior to the actual selling date and all possible buyers must be informed.
- Movable assets may be sold either by way of:
  - Written price quotations;
  - A competitive bidding process;
  - Auction; or
  - At market related prices;

  whichever is the most advantageous.
- Assets can be sold in one of the following categories-:
  - As a lot.
  - As an individual item.
  - As scrap.
- In all cases, lot numbers must be allocated to each lot/item and a date and time must be stipulated on the notice of selling as to when potential buyers can view the items up for selling.
- The notice of selling must contain the following information:
  - Closing time and date for bids.
  - Date and time and place when and where the items can be viewed by potential buyers.
  - The condition of sale.
- Only officials who had been authorized in writing are allowed to handle government revenue.
- In the case of free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the

equipment.

- In the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic.
- The BAC will approve the trade-in of assets, ensuring that the highest possible trade-in price is obtained, taking into account the cost-effectiveness of any alternatives.

1. 6.1.1 PREPARATION

OPERATIONAL

6.1.1.1 If assets become unusable/redundant/obsolete, the location manager must investigate the matter internally.

6.1.1.2 When an asset can no longer be utilised for its intended purposes the matter must be reported via the prescribed procedures to thelocation manager.

6.1.1.3 In the case of damaged technical/electronic/motorised assets, all steps must be taken by the location manager to first try and repair the specific assets costs effectively

6.1.1.4 In the case of redundant/obsolete assets, the location manager must issue a certificate with proper and complete reasons as to why the asset had become redundant/obsolete as well as possible options for utilising such assets to the best advantage of the Municipality.

6.1.2 PROCESS

OPERATIONAL

6.1.2.1 Application for disposal

- The location manager must complete the Disposal Application and attach all the required documents to the application which is forwarded to the senior manager
- Other forms that must be completed (depending on asset) are:
  - *(i) Disposal Application*
  - *(ii) Technical Report/supplier report if item is unserviceable*
  - *(iii) Any other motivation for disposal*
- If the asset in question is in line with the application, the senior manager will sign the Disposal application as proof that the asset has been removed from the location manager and moved to the identified disposal location.
- If it is determined that the asset had been damaged through negligence or miss-use, the application will be rejected and in such cases the senior manager should report the asset as a loss to the Municipal loss control officer.
- The physical asset along with the relevant documentation must be forwarded to the Asset Management component

6.1.2.2 Actions to be taken by the Asset Controller

- Acknowledge receipt of the asset by signing the relevant documents-

(i) Disposal Application

(ii) Technical , workshop or other report

- Location Manager will forward application form as well all other relevant documentation to the Asset Controller to initiate the process.
- The physical asset must be removed to the disposal location identified. The physical location must be kept secure at all times to ensure that no assets are moved in or removed from this location without the knowledge of the asset controller and relevant documentation has been completed.
- The Asset Controller must prepare all necessary documentation with regard to assets for disposal

(i) .

6.1.2.3 Actions of the Asset Manager

- Must gather all documentation and possible amendments to the schedules
-

6.1.3 CONTROL OF DOCUMENTATION

OPERATIONAL

6.1.3.1 All documentation, after final completion of the disposal process, must be filed in accordance with the document number and type of transaction within the asset management section for audit purposes.

PART 6.2: DISPOSAL OF IMMOVABLE ASSETS

6.2.1 PREPARATION

MATR, 2008

POLICY

6.2.1.1 Council is permitted to dispose or let immovable property in its ownership, on a long term or short term basis, by way of Private Treaty or Open Bid for development purposes aligned with its strategic objectives.

6.2.1.2 Where possible, Council's immovable property should be managed as a sustainable resource by leveraging environmental, social and economic returns on such immovable property while Council retains ownership thereof.

6.2.1.3 Unless otherwise provided for in this Policy, vacant or improved immovable property shall be disposed of or let at a fair market related rental except when the public interest or the plight of the poor demands otherwise.

6.2.1.4 Ensure that all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed.

6.2.1.5 All applications to dispose of or lease immovable property must be considered in accordance with this Policy Framework and other applicable legislation.

6.2.1.6 Unless otherwise provided herein, the disposal of viable immovable property by Council, shall be affected by means of a process of public competition/open bid.

6.2.1.7 Unless otherwise provided herein, the letting of viable immovable property by Council, up a value of R2 million and a term less than three years, the Accounting Officer shall decide and

approve the method of letting of the asset

6.2.1.8 Unless otherwise provided herein, the letting of viable immovable property by Council, with a value of more than R2 million and a term more than three years, Council shall decide and approve the method of letting of the asset

6.2.1.9 Previously Disadvantaged Individuals, who are South African citizens, will be afforded preference in terms of the Municipality's Supply Chain Management Policy in respect of the disposal of or letting of viable immovable properties as embodied in Section 9 (2) of the Constitution.

6.2.1.10 In order to achieve the objective of Broad Based Black Economic Empowerment, Council reserves the right to limit the number of leases per bidder in the course of a bid process.

6.2.1.11 No application shall be processed unless the prescribed application fee or tariff has been paid nor shall any proposed lease be advertised unless the applicant has confirmed, in writing, that it will bear all costs involved in such transaction including, but not limited to, Legal, Survey, Re-zoning, Sub-division, Consolidations, Advertisement, Relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs.

OPERATIONAL

6.2.1.12 The following procedure will guide the decision making to dispose or let Municipal land:

- The Manager: Administrative Support will complete an application form and confirm that the request is consistent with the Municipality's asset management plan and IDP.
- The Manager: Planning will submit a substantiating report confirming the suitability, condition and whole-life-costing of retaining, disposal or letting of the relevant property.
- The Manager: Property Administration or delegated official/ committee will review:
  - (i) The application form and supporting documentation,
  - (ii) The views of the local planning and community planning Departments,
  - (iii) The comments from a legal perspective regarding title deeds and servitudes to ascertain any restrictive covenants or obligations on the Council which may affect the value or disposal or letting of the land,
  - (iv) The property is not required for minimum level of basic Municipal services,
  - (v) The valuation of the land [market value determination to be facilitated by the Head: Property Administration],
  - (vi) The economic and community value of the asset if disposed or let,
  - (vii) The financial appraisal from the CFO as to whether or not the disposal or letting of the property would be financially viable to the Council, which appraisal would be regarded as confidential as per the provisions of the Promotion of Access to Information Act, 2000 – [PAIA],
  - (viii) The category of the property,
  - (ix) The method of disposal or letting,
  - (x) Ongoing resource implications for the Municipality as a result of the disposal or letting including life-cycle costs,
  - (xi) Potential risks and mitigating factors,

(xii) Effect of disposal on the credit rating of the Municipality, if applicable,

(xiii) Transfer of liabilities, if applicable,

(xiv) Public participation process required, and

(xv) Whether the property is exempted as per section 14(6) of the MFMA, i.e value of property less than R 10m – no public participation process is required.

- The report of the Manager: Property Administration or delegated official/ committee will be submitted to Council for endorsement.
- Once endorsed by Council and if the value exceeds R 10 m, comments will be solicited from:
    (i) The community,
    (ii) Other interested persons,
    (iii) National Treasury and relevant Provincial Treasury,
    (iv) National department responsible for local government, and
    (v) Relevant national or provincial department, if the property involves the provision of water, sanitation or electricity.
- The Manager: Property Administration or delegated official/ committee must consider the comments and views referred to above.
- The report of the Manager: Property Administration or delegated official/ committee together with a final recommendation will be submitted to Council for approval.

6.2.2 PROCESS

6.2.2.1 ADVERTISEMENT PROCESS

POLICY

- This process applies to properties exceeding the value of R 10 m and/or exceeds a period of 3 years.

PRINCIPLES

- The AO must, within 60 days after the approval of Council in Part 7.2 places a public advert in the main local newspapers distributed in the Municipal area:
    (i) Calling for bids if the method of disposal or letting is as per a public bid
    (ii) Describing the method as approved by the Council if the method of disposal or letting is as per :
        - Donation Transfer
        - Exchange
        - Public Private Partnership
        - Sale by Pre-qualification
        - Transfer between spheres of government
        - Unsolicited bids
        - Special circumstances
    (iii) Requesting public comment or input, subject to MATR exemptions.

6.2.2.2 APPLICATION PROCESS

POLICY

- Applications must:
  - (i) Be made on the prescribed forms (if applicable).
  - (ii) All applications must be accompanied by a covering letter on the letterhead of the person, organisation or body, signed by the Head of the Organisation or body and must include the following information:
    - Date of application;
    - Contact details of the organisation or body;
    - Date established;
    - Type of organisation;
    - Registration number;
    - Banking details;
    - References;
    - Confirmation of adherence to all conditions;
    - Checklist of supporting documentation; and
    - Prescribed declarations.

6.2.2.3 PROCESSING OF THE APPLICATIONS

OPERATIONAL

- Applications will be received and registered by the Manager: Property Administration.
- A first screening will be conducted by the Manager: Property Administration confirming:
  - (i) *Compliance with the criteria contained in this policy;*
  - *(ii) Viability of project;*
  - *(iii) Sustainability of project;*
  - *(iv) That applications have demonstrated that it meets the goals of the IDP;*
  - *(v) That applicants have demonstrated cost-effectiveness measures and ability to execute project successfully, achieve clearly defined outputs or outcomes and ability to manage funds effectively; and*
  - *(vii) Other conditions that the applicants have agreed to.*
- In the event that applications are received via an open bidding process the SCM Unit and the Manager: Administrative Support will jointly conduct the first screening. The evaluation and adjudication of the tenders received will be processed via the relevant SCM Evaluation and SCM Adjudication Committees, where after the decisions will be forwarded to the Disposal Committee for final review and recommendation.

6.2.2.4 APPROVAL PROCESS

OPERATIONAL

- The Manager: Property Administration or delegated official/ committee will make the final

recommendation to the AO ensuring that it:

(i) *Considered all relevant public comments;*

(ii) Complies with the Municipality's criteria;

(iii) Complies with the budgeted funds;

(iv) Complies with the provisions of section 14 and 33 of the MFMA; and

(v) The successful applicants' Municipal accounts are up to date or have submitted a sworn statement that the applicant has no municipal accounts in its name.

- Council will be informed of the outcome of the process and a copy of the final agreement concluded.

6.2.2.5 AWARD AND NEGOTIATION PROCESS

OPERATIONAL

- All applicants will be informed in writing of the outcome of their applications by the relevant Director or his nominee.
- Where applicants were turned down, they must be provided with reasons.
- Successful applicants must negotiate and sign the relevant Land Availability/Sale of Land/Lease of Land Agreement.
- Where Municipal land is disposed of or let as per the special circumstances or Social Care Users, the following procedure is required:

(i) The benefitting organisation must prepare a Business Plan setting out the benefits to the Community and evidence how it intends to manage and operate the land for the benefit of the Community should the Council dispose or let the Municipal land to such Organisation,

(ii) The Land Disposal Committee will:

- Confirm relevant Policy and prescribed information,
- Identify any risks involved in the disposal or letting of the property to the relevant Organisation as deduced from the Business Plan and advice how these risks could be mitigated,
- Identify and confirm the benefits to the community and whether the community benefits outweigh the risks identified, and
- Confirm the on-going future partnership arrangements between the Municipality and the relevant Organisation and monitoring of the benefits to the community as a result of the disposal or letting.

6.2.3 CONTROL OF DOCUMENTATION

PRINCIPLES

6.2.3.1 Payments will be effected through the CFO.

6.2.3.2 For accounting purposes, it is required that:

(i) All property disposals will be accounted for in Capital Replacement Reserve.

(ii) All property disposal/letting expenses are accounted for from General Expenditure.

VOLUME7: RISK AND PERFORMANCE MANANGEMENT

PART 7.1: RISK MANAGMENT

7.1.1 RESPONSIBILITY FOR RISK MANAGEMENT

Refer to SCM TR 41

POLICY

7.1.1.1 The AO shall ensure that the Municipality has and maintains an effective system of risk management for the identification, consideration and avoidance of potential risks in the SCM system.

7.1.1.2 Aspects of risk management shall be allocated to the CFO, the SCM practitioners, the internal audit function and the Audit Committee, each of which shall ultimately be accountable to the AO for the discharge of their responsibilities.

PRINCIPLES

7.1.1.3 Risk management is a key responsibility of the AO.

7.1.1.4 The MFMA and relevant Treasury Regulations assign responsibilities for aspects of risk management to management, the CFO, the internal audit function and the Audit Committee, each at the appropriate level of execution.

7.1.1.5 Risk management is however a continuous and proactive process that relates to all organisational activities at all levels.

7.1.1.6 All SCM practitioners must have a thorough understanding of the risks involved in the activities under their control and actively work towards managing these risks.

7.1.1.7 Each practitioner has a responsibility toward risk management.

7.1.1.8 SCM related risk management must be applied complimentary to the Municipal risk management system.

7.1.2 ELEMENTS OF RISK MANAGEMENT

PRINCIPLES

7.1.2.1 Risk management is the culture, processes and structures that are directed towards the effective management of potential opportunities and adverse effects. Risk management forms an integral part of the SCM process.

7.1.2.2 The elements of risk management therefore are:

- Assessing the nature and extent of the risks associated with the Municipality's operations.
- Deciding on an acceptable level of loss or degree of failure.
- Deciding how to manage (minimize) the risk.
- Monitoring, reporting and from time to time re-assessing the level and implications of the risk exposure.

7.1.3 APPLICATION OF RISK MANAGEMENT IN SCM

POLICY

7.1.3.1 The Municipality shall, where applicable, apply Treasury Guidelines on Risk Management.

7.1.4.1 The Accounting Officer or delegated authority shall determine the Municipality's risk appetite.

7.1.3.3 Risks shall be identified upfront on a case-by-case basis.

7.1.3.4 Risks shall be allocated to the party best able to manage such risk.

7.1.3.5 The Municipalitymust bear the cost of risks where the cost of transferring risk is greater than that of retaining such risk and it must transfer the risk where this is not the case.

7.1.3.6 Risks shall be managed in a pro-active manner and the provision of adequate cover for residual risks.

7.1.3.7 The bid and contract documentation must clearly state to whom the risk has been allocated and who should take responsibility for managing it.

PRINCIPLES

7.1.3.8 Risks must be identified and assessed together with the identification and crafting of the requirement and are essentially driven by the objectives that must be achieved.

7.1.3.9 Decisions must be taken with regard to minimising the Municipality's exposure to risk, as well as to the potential effects of the risks. The focus should be on an approach involving preventing risks from materialising, detecting the effects of risks as soon as possible and correcting or recovering from the consequences.

7.1.3.10 Risk management decisions must continuously involve a cost benefit analysis (considerations of economy). The cost of controlling (minimising) a risk must not exceed the benefits to the Municipality. Benefits can include the objective or subjective measurement of the cost to the Municipality if the particular risk should materialize. (If it is not controlled what is the potential cost to the Municipality?).

7.1.3.11 The identification, assessment and controlling of risks necessarily implies a specific management process including various stages and steps.

7.1.3.12 The controlling (minimizing) of identified risks essentially refers to the development and implementation of risk management techniques.

7.1.3.13 Risk management entails, inter alia, a management culture that accepts that all business opportunities entail risk taking. The trade-off between success and failure and to decide what is an acceptable risk (having regard to its cost and other social or political factors) that a programme might not achieve any or all of its objectives.

7.1.3.14 A major component of risk management is the establishment of a fraud prevention plan which aims to manage the risk of fraud through cost-effective use of the control environment, information systems, control procedures and an ethical culture within the Municipality.

7.1.3.15 Risk must be identified on a case-by-case basis. It would however be good to build a list of potential risks over time that can be considered for each requirement.

7.1.3.16 Allocate the risk to the party best able to manage such risks.

7.1.3.17 The Municipality should bear the cost of risks where the costs of transferring risk is greater than that of retaining such risk and transfer to risk where this is not the case.

7.1.3.18 The exercise of risk management in a proactive manner and providing adequately for the cover of residual risks.

7.1.3.19 Bid and contract documentation must clearly and unambiguously assign relative risks to the relevant bidding and contracting parties.

7.1.3.20 Risk management should form part of the business plan for the acquisition of all goods, services and works.

7.1.3.21 The Municipality should insure for procurement related physical risks, establish risk management programmes or make advance provision for losses associated with such risks. Suitable arrangements should also be made to ensure that insurance related excesses do not cause the failure of emerging small and micro enterprises.

7.1.3.22 Ensure adequate resources to support control risk mitigation and control measures are incorporated.

RISK MANAGEMENT PHASES

7.1.3.23 There are 3 distinct phases in any selection, appointment and delivery process of a bid that can be analyzed and the various risks assessed:



(i) **BID RISK – PRE-BID FACTORS:**

- Legislative/Legal requirements:There are a host of prescripts that govern the bid process as indicated above. Although designed to reduce subjectivity in the selection criteria, they can create a potential hazard due to the technical nature and legalities that govern the various SCM processes.
- Deliverables:The bid specifications are designed to guide the bidders in meeting the expectations of the bid requirements. Deliverables are to be clearly stipulated against timelines and monetary cost. SCM practitioners should be wary of bidders who have merely replicated the specifications of the bid without any apparent attempt to interpret or contextualize what the objectives of the bid are.
- Timeframes:The bid timeframes need to be realistic in what is expected of the bidder. Unfortunately the drafters of bids can be under budgetary or political pressure and may include unrealistic timelines in the bid. Effective supply chain management should question the viability of potentially setting up a bidder to fail or be forced to submit/deliver sub-standard work so as to meet these aggressive targets. In the bid the bidder should have a clear Gantt chart that specifies the entire project plan coupled with resourcing and milestone dates.
- Municipal resources:Of importance in the facilitation of the entire bid (as well as post-bid project roll-out) the department needs to ensure that there are sufficient capacitated Municipal resources to monitor the process throughout contracting and implementation.
- Costs:Pricing is a key selection criterion in all bids. Although it should not be a case of “cheapest bidder wins”, the justification of a more expensive bidder over another is the first criteria point that

comes under scrutiny. Often the most contested issues between bidders is who was the cheapest. The pre-bid bid phase forces the department to consider what a realistic price is for the meeting of the deliverable. (Hint: if there is a very wide pricing discrepancy between the bidders – a variation of more than 100% - then it is possible that the bid specifications have not been clearly specified.)

- Political risk:Service delivery is ultimately linked to political promises and must be considered. However, NO political interference with SCM processes at any stage is allowed.

(ii) **BIDDER RISK – MID-BID FACTORS**:

- Profile **–** The profile of the bidder should be assessed against the core competencies of the company. In all construction or civil engineering related work, the CIDB grading must also be verified.
- Capacity/staff/size/location **–** During the Bid Specification process the Municipality must develop a full understanding of the bidder capabilities required in order to meet the demands of the project.
- Preferences/B-BBEE **–** the SCM practitioner is well guided here in terms of the PPPFA Regulations on how to measure and assess the preference status of a bidder. Because of its nature and the competitiveness between bidders, fronting is a reality that needs to be assessed and mitigated.
- Financial position **–** Ultimately the bidder needs to demonstrate that they are able to commence the project and have sufficient cash flow to ensure project floatation and reduce the risk of delay through strike action, inability to pay plant hire, liabilities and staff costs.
- Experience **–** the bidder will need to submit various references and articulate experience from similar projects. The bidders should have the following information included in the bid relating to their past experience:
    - Name of client
    - Nature of project
    - Monetary value of project
    - Project dates
    - Client reference name and title
    - Client contact number (and e-mail address) and referrals.

(iii) **CONTRACT RISK – POST-BID FACTORS**:

- Project risks:The unique nature of each project will determine the nature of the project risks that can arise throughout the project lifespan. There are certain generic project management criteria that can serve as early warning signs that a project could start losing traction:
    - A high churn of project staff
    - Diluted progress reports
    - Minutes that appear repetitive
    - Progress reports that echo the last report
    - Scope creep at early stages of the project
    - Missing of project milestones
    - A lack of visible progress
    - An inability to engage meaningfully and contextually with department project managers

- Invoices without detail
- Poor quality products
- An over- reliance on sub-contractors

- Contract administration and management risks - Risks related to the contract management and administration must be considered and managed. Some of the more common risks related to managing a contract include:
  - The failure of either party to fulfill the conditions of the contract.
  - Inadequately administering/managing the contract.
  - Unauthorized changes to the contract.
  - The failure to meet the strategic objectives of the bid/contract.
  - The loss of intellectual property.
  - Changing scope.
  - Changing technology.
  - Fraud.
  - The lack of properly maintained records.
  - Unethical behavior or conflicts of interest.
  - Changes or absences in key personnel.
  - New business processes do not integrate with existing processes.
  - People (in both organizations) fail to understand their obligations and responsibilities.
  - There are misunderstandings, disagreements and underestimations.
  - Too many issues are escalated inappropriately.
  - Progress is slow or there seems to be an inability to move forward.
  - The intended benefits are not realized.
  - Opportunities to improve value for money and performance are missed.
  - Ultimately, the contract becomes unworkable.
  - Poorly drafted contract.
  - Inadequate resources are assigned to contract management.
  - The customer team does not match the provider team in terms of either skills or experience (or both).
  - The wrong people are put in place, leading to personality clashes.
  - The context, complexities and dependencies of the contract are not well understood.
  - There is a failure to check provider assumptions.
  - Authorities or responsibilities relating to commercial decisions are not clear.
  - Lack of performance measurement or benchmarking by the customer.
  - Failure to monitor and manage retained risks (statutory, political and commercial).

OPERATIONAL

7.1.3.24 The following provides a user-friendly mechanism to conduct SCM related risk-management:

7-STEP TOOLKIT FOR SCM RISK MANAGEMENT

Bid process: **pre-bid** **mid-bid** **post-bid**

Tender number:

Programme:

Tender outcome/deliverables:

Tender approach:

STEP 1

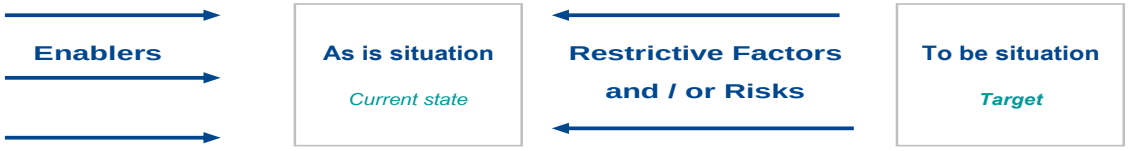
LEANING TOWER OF PIZZA – lesson is to focus on what works and what is positive.

APPRECIATIVE ENQUIRY – lesson is to determine what will enable the bid to succeed.

TENDER ENABLERS
ENABLERS IDENTIFIED (*complete*):

STEP 2

FORCE FIELD ANALYSIS – lesson is to determine where you are and where you want to be.



AS-IS AND TO-BE FRAMEWORK	
AS-IS	TO-BE
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

STEP 3

RISK IDENTIFICATION – lesson is to determine what may restrict you in getting to where you want to be.

RISK IDENTIFICATION		
AS-IS	RISKS THAT MAY PREVENT ACHIEVING THE TO BE SITUATION	TO-BE

STEP 4

RISK QUANTIFICATION MODEL – lesson is to determine the IMPACT and PROBABILITY of the restrictive factors/risks identified in 3 above, by using the electronic toolkit provided

Risk Management Process:

(i) Take each identified risk and determines its impact number (1-5) and probability number (1-5).

(ii) Multiply the impact number with the probability number, e.g Impact 4 x Probability 2 = 8.

(iii) Complete this exercise for all risks identified.

(iv) List the multiplied number and risks from the highest number to the lowest number.

(v) The highest the multiplied number of the risk = the higher the risk.

(vi) Multiply the number of risks with 25 to get a total possible amount (highest possible score for a risk is a 25).

(vii) Add all the individual risk scores together.

(viii) The number in (vii) must then be divided by the number in (vi) and multiplied by a 100 = the percentage (%) risk the complete initiative holds.

RISK FACTORS
1 - ..... **Risks:** ***Eg:*** *Poor Quality 3x1 = 3* *Lack of Time 3x2 = 6* *Lack of Capacity 2x2= 4* *Total 13* *Percentage risk of project failing: 13/27 = 48%*
2 – ... **Risks:**

The excel electronic toolkit provided can also be applied to graphically depict risk identification and quantification.

STEP 5

RISK MINIMISATION AND CONTINGENCIES – lesson is to identify for each identified high risk, what activities will minimise the risk and if the risk occurs, what contingencies will apply. To determine how risk should be managed will be guided by the tool of MARTA as per Part 11.5.2.

RISK MINIMISATION AND MITIGATIONS FACTORS
1 – Risk name: ..... **Risk score:** .... **Mitigating factors** ***Eg:*** 1. Lack of Time Project plan (internal) Project plan (p/ 8 ITP's) Proper project management 2. Capacity Checklist and consolidated framework compiled in team (2-3 days) 3. Quality Proper project management tools
2 – Risk name: ..... **Risk score:** ... **Mitigating factors**

STEP 6

EFFORT SCALE – the lesson is to determine the IMPACT vs EFFORT required addressing the identified risks and contingencies thus ensuring sufficient and appropriate resources are allocated to those issues that will achieve the most positive IMPACT with the least possible EFFORT. A project within the A, A/B or B category is the preferred option.

PARETO 80/20 PRINCIPLE WILL APPLY – you do not spend 80% of your effort on 20% impact.

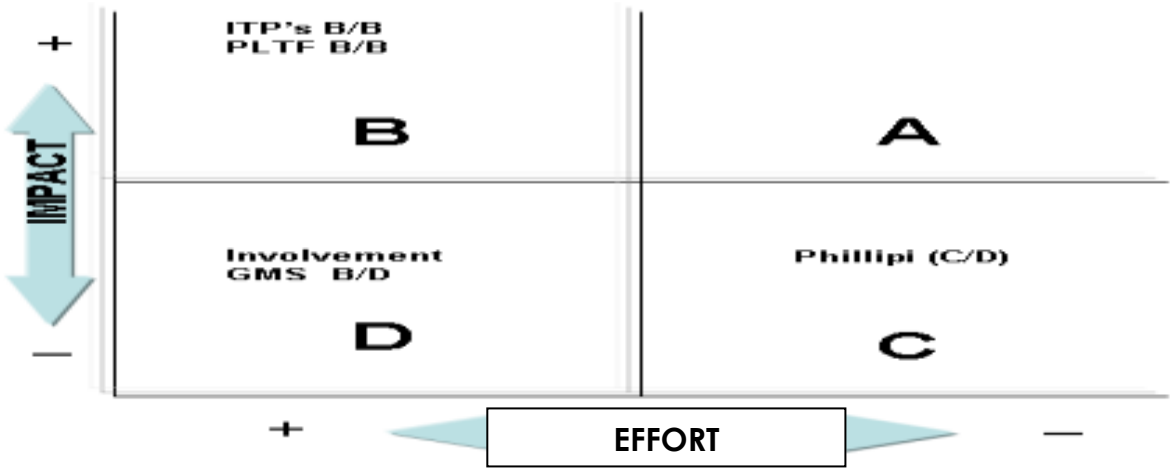


Figure 1 above depicts the determined Effort vs Impact Model, indicating what involvement is required striving to achieve limited effort with high impact

STEP 7

DETERMINE ACTIONS – lesson is to determine that once you know where you are, where you want to be, what your risk exposure is and what contingencies you have in place, it is imperative to determine what actions/activities/processes you are going to embark on:

TENDER ACTIONS	WHO				WHEN	PROGRESS/REMARKS
	R	A	C	I		
R=responsible; A=accountable=consult; I=inform						

REVIEWED BY: _____ ***(NAME)***

_____ ***(SIGNATURE)***

DESIGNATION: _____

DATE: _____

FURTHER REVIEW REQUIRED: **YES / NO**

DUE DATE: _____

FINAL SIGN-OFF: _____ ***(NAME)***

_____ ***(SIGNATURE)***

DESIGNATION: _____

DATE: _____

PART 8.2: GUARANTEES

Refer to MFMA s50

POLICY

7.2.1 National and provincial guarantees

7.2.1.1 Neither the national nor a provincial government may guarantee the debt of a Municipality except to the extent that Chapter 8 of the Public Finance Management Act, 1999 provides for such guarantees.

7.2.1.2 ''debt'' means— (a) a monetary liability or obligation created by a financing agreement, note, debenture, bond or overdraft, or by the issuance of Municipal debt instruments; or (b) a contingent liability such as that created by guaranteeing a monetary liability or obligation of another;

7.2.2 Municipal guarantees

7.2.2.1 A Municipality may not issue any guarantee for any commitment or debt of any organ of state or person, except on the following conditions:

- The guarantee must be within limits specified in the Municipality's approved budget;
- a Municipality may guarantee the debt of a Municipal entity under its sole control only if the guarantee is authorised by the council in the same manner and subject to the same conditions applicable to a Municipality in terms of this Chapter if it incurs debt;
- a Municipality may guarantee the debt of a Municipal entity under its shared control or of any other person, but only with the approval of the National Treasury, and then only if—
    - (i) the Municipality creates, and maintains for the duration of the guarantee, a cash-backed reserve equal to its total potential financial exposure as a result of such guarantee; or
    - (ii) the Municipality purchases and maintains in effect for the duration of the guarantee, a policy of insurance issued by a registered insurer, which covers the full amount of the Municipality's potential financial exposure as a result of such guarantee.

7.2.3 Guarantees, indemnities and securities by Councilors

7.2.3.1 A Councilor, with the written concurrence of the Executive Mayor (given either specifically in each case or generally with regard to a category of cases and subject to any conditions approved by the Executive Mayor), may issue a guarantee, indemnity or security which binds—

- the Municipal Revenue Fund in respect of a financial commitment incurred or to be incurred by the Councilor; or
- a Municipal entity in respect of a financial commitment incurred or to be incurred by that entity.

7.2.3.2 Any payment under a guarantee, indemnity or security issued in terms of—

- subsection (1)(a), is a direct charge against the Municipal Revenue Fund, and any such payment must in the first instance be defrayed from the funds budgeted for in the department that is

concerned with the issue of the guarantee, indemnity or security in question; and

- subsection (1)(b), is a charge against the Municipal entity concerned.

7.2.3.3 A Councilor who seeks the Executive Mayor's concurrence for the issue of a guarantee, indemnity or security in terms of subsection (1)(a) or (b), must provide the Mayor with all relevant information as the Mayor may require regarding the issue of such guarantee, indemnity or security and the relevant financial commitment.The responsible Councilor must at least annually report the circumstances relating to any payments under a guarantee, indemnity or security issued in terms of subsection (1)(a) or (b), to the Municipal Council.

PRINCIPLES

7.2.3.4 Performance guarantees should be commensurate with the degree of contractual risk to which the Municipality are exposed, but is required for projects exceeding R 10 m in value.

7.2.3.5 In cases of large and complex contracts, it is advisable to call for bid guarantees to prevent the submission of irresponsible bids.

7.2.3.6 Performance guarantees should spread the cost of the risk of failure between the contracting parties and should be set at such a level that all the Municipality's costs relating to such failure are likely to be recovered.

OPERATIONAL

LOANS, GUARANTEES AND OTHER COMMITMENTS

7.2.4 General principles

7.2.4.1 Restrictions on borrowing, guarantees and other commitments

- An institution may not borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that institution or the Revenue Fund to any future financial commitment, unless such borrowing, guarantee, indemnity, security or other transaction—
  (i) is authorised by an Act; and
  (ii) in the case of public entities, is also authorised by other legislation not in conflict with the MFMA
- Only the following persons may borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind the Revenue Fund to any future financial commitment:
  (i) Transactions that bind or may bind the Municipal Revenue Fund: the Executive Mayor or, in the case of the issue of a guarantee, indemnity or security, the responsible Executive Committee acting with the concurrence of the Mayor.
- Municipal entities may only through the following persons borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that entity to any future financial commitment:
  (i) A Municipal entity listed in the MFMA: The accounting authority for that entity.
- A Municipal entity authorised to borrow money—
  (i) must annually submit to the Council a borrowing programme for the year; and
  (ii) may not borrow money in a foreign currency above a prescribed limit, except when that public

entity is a company in which the state is not the only shareholder. .

7.2.4.2 Consequences of unauthorised transactions

- If a person, otherwise than in accordance with a Council Policy, lends money to an institution or purports to issue on behalf of such an institution a guarantee, indemnity or security, or enters into any other transaction which purports to bind such an institution to any future financial commitment, the state and that institution is not bound by the lending contract or the guarantee, indemnity, security or other transaction.

PART 7.4: SCM PERFORMANCE REVIEW

7.3.1 DEFINING PERFORMANCE MANAGEMENT

SCM TR 42

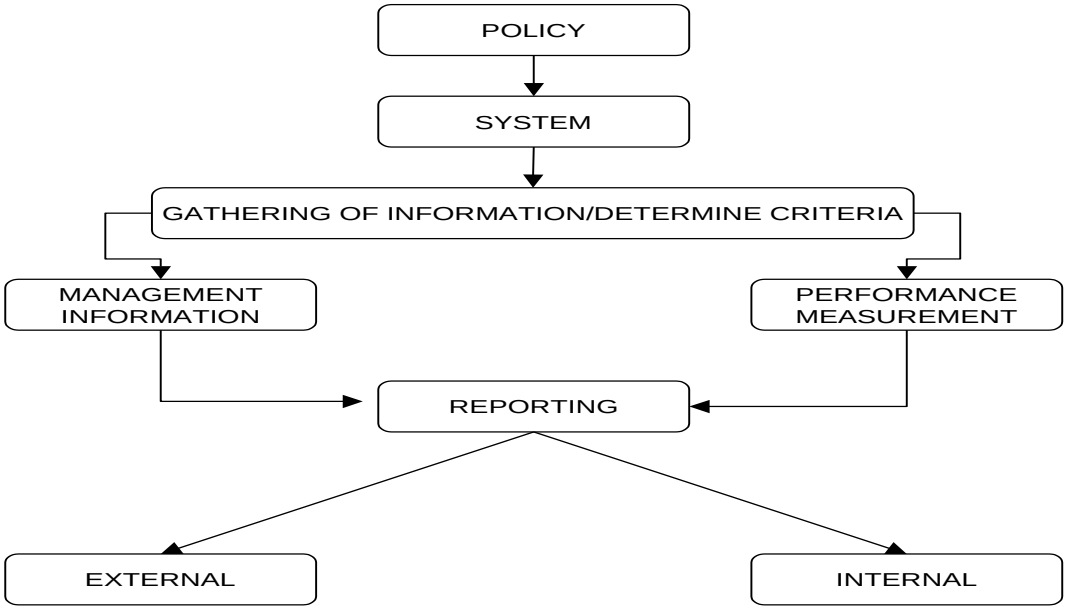
PRINCIPLES

7.3.1.1 Performance management is a pro-active and re-active (retrospective) process of determining whether objectives and Municipal strategic and operational goals are being met. As such it serves as a management tool.

7.3.1.2 Since the SCM System is an integral part in achieving these objectives, it is necessary that recording, reporting and performance measurement regarding the SCM system must take place.

7.3.1.3 It is therefore essential that the Municipality must establish a system as illustrated and explained in more detail hereunder:

THE RECORD KEEPING, REPORTING AND PERFORMANCE MEASUREMENT SYSTEM



7.3.1.4 Gathering of information/determining criteria

- The National Treasury has determined that they require certain information so as to determine the implementation and progress made by Institutions regarding the SCM system.
- The Municipality is therefore compelled to ensure the continuous gathering and recording of this information to satisfy the requirement. In certain cases, the criteria to be used in determining

progress will have to be compiled and updated at regular intervals. Steps will then have to be taken within the Municipality to ensure that this system is implemented.

7.3.1.5 Management Information

- From the gathered information the prescribed external and internal management reports must be compiled and distributed.

OPERATIONAL

7.3.1.6 Performance Measurement

- The SCM Unit is responsible to measure the Municipality's progress regarding the achievement of the goals by using the pre-determined criteria. The results of this measurement will then be included in external and internal reports as prescribed.

7.3.2 ASSESSMENT/MEASUREMENT OF SUPPLY CHAIN PERFORMANCE

POLICY

7.3.2.1 The Municipality shall measure and monitor the SCMPPOS and process through a performance measurement system to ascertain whether government's objectives and targets set have been achieved. In this regard complete records pertaining to SCM will be kept.

7.3.2.2 The Municipality shall monitor and assess the performance of all contractors during the contract period.

7.3.3 DEFINING SCM PERFORMANCE MEASUREMENT

PRINCIPLES

7.3.3.1 Supply chain performance is a monitoring process during which a retrospective analysis is undertaken to determine whether the prescribed SCM processes are being followed and whether the desired objectives are in the process of being achieved.

7.3.3.2 SCM performance can be broken down into two categories of performance measurement:

- Contractor assessment.
- Monitoring of the SCMPPOS and processes followed.

7.3.4 MONITORING OF THE SCMPPOS

PRINCIPLES

7.3.4.1 The AO must, within 30 days of the end of each financial year, submit a report on the implementation of this Policy of the Municipality and of any Municipal Entity under its sole or shared control, to the Council of the Municipality, and whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to the Council.

7.3.4.2 The AO must, within 10 days of the end of each quarter, submit a report on the implementation of the SCM Policy to the Mayor.

7.3.4.3 The reports must be made public in accordance with section 21A of the MSA. The AO will, within 60 days of the end of each financial year, submit to the PT any information concerning SCM in such format as the NT may determine.

7.3.4.4 The purpose of reporting is to effectively measure the achievement of government's as well as the Municipality's procurement objectives and targets set.

7.3.4.5 The AO, in consultation with the Council, must determine whether the proper process has been followed and whether the desired objectives and targets have been achieved. The Municipality must be able to extract accurate commercial and other relevant information.

7.3.4.6 The use of a common scorecard by the Municipality will provide a basic framework against which to benchmark the same process. The scorecard also allows the Municipality to align its SCM practices and individual strategies. The scorecard facilitates the process of setting measurable targets for implementation plans and to highlight deficiencies to be attended to.

OPERATIONAL

7.3.4.7 The SCM office established in the relevant Treasury will monitor the implementation and supporting regulations and standards issued by the Treasury and the CFO of Municipality.

7.3.4.8 All actions pertaining to the SCM function, with specific reference to the acquisition function, must be recorded continuously in order to:

- Prove accountability.
- Gather management information to enable managers to:
    (i) Measure performance in terms of achievement of goals.
    (ii) Measure compliance with norms and standards.
    (iii) Determine savings generated.
    (iv) Determine cost variance per item to indicate the premium paid for promoting preferential objectives.
    (v) Identify any breach of contract.
    (vi) Determine cost efficiency of the acquisition process.
    (vii) Determine whether SCM objectives are consistent with Government's broader policy focus.
    (viii) That the material construction standards become increasingly aligned with those standards that support international best practice.
    (ix) That the principles of co-operative governance as expounded in the Constitution are observed.
    (x) That the reduction of regional economic disparities is promoted.
    (xi) Stores efficiency.
- Assist managers in their planning and budgeting responsibilities.

PART 7.4: REPORTING OF SCM INFORMATION

PRINCIPLES

7.4.1 The Municipality shall report quarterly to the Council on the following aspects:

- Total procurement spend.
- Percentage of total spend directed toward B-BBEE.
- Percentage of total spend directed toward Small Medium and Micro Enterprises (SMME's).

- Information required regarding urgent/emergency procurement processes followed.
- Process disputes.
- Instances of alleged and proven fraud or corruption.
- Information regarding deviation processes followed. Examples of such processes are:
  - Non-utilization of the provider list
  - Subdividing of total requirements
  - Unplanned spending and obtaining less than the required number of quotes.
  - In short any deviation from the Accounting Officer's delegated powers constitutes a deviation.

PART 87: OPTIMAL SYSTEM UTILISATION

POLICY

7.5.1 An electronic SCM system interfacing and integrating with the financial system of the Municipality may be instituted.

PRINCIPLES

7.5.2 Minimum user-criteria to include:

7.5.2.1 Parameters common to all SCM actions:

- Define prime parameters common to all SCM actions and allocate appropriately on the relevant electronic system.

7.5.2.2 User access to procurement processing:

- Restrict users to only certain actions or functionality depending on authority.
- Allocate dummy user ID to SCM-users in order to eliminate having to continually record the personal details of procurement applicants.
- Allocate proper logon to users who perform SCM management functions, or act as superior in the authorisation process.
- Type of SCM user:
  (i) **No Access:** Default
  (ii) **Applicant:** May input a new request, change and view own requests only
  (iii) **SCM Practitioner:** A delegated SCM official with authority to perform all procurement actions
  (iv) **T-Storekeeper:** A delegated SCM practitioner with authority to perform procurement actions for either a named store or all stores only
- Optional post type may be used to identify specific types of user.
- Additional general security and authorisation particulars:
  (i) Authorise expenditure to the value of R…
  (ii) Superior users to which a request is to be forwarded for authorisation of expenditure if the user's limit is insufficient to cover total request value
  (iii) Sub-delegated if the user is unable to fulfill functions these may be temporarily sub-delegated to another user
  (iv) Temporarily sub-delegated to user who may also have a personal limit and own

superior

(v) Sign-off procurement authorisation limited to a value of R…

7.5.2.3 User options defined by the individual SCM user:

- Build level of personal security into the system.
- Password valid for one month only – after which it must be changed by the user.
- Passwords must be rotated (the system will not allow the user to change the password to the same value as currently used or to any one of the previous number of passwords.
- Control the access/authorisation of users to the use of cost codes and the values which may be authorised for expenditure – this may differ from year to year and depend on the level of authority of the user.
- Nominate a list of cost codes for each user who may authorise expenditure.
- Limit users to the selection of only their personal list of cost codes – and be unable to select a total procurement amount in excess of the maximum value.

7.5.2.4 Updating of the registration details of existing creditors and/or suppliers:

- Update suppliers and existing creditors using the same input form.

7.5.2.5 Re-registration of suppliers/creditors:

- De-register all creditors at year-end and only re-register once they have supplied their latest information.

7.5.2.6 Archiving of supplier related documents:

- Scan and enter ID into system via supplier maintenance procedure with initial registration.

7.5.2.7 Input of a request for goods or services – reserving of finance:

- A request for goods and services may be entered by any user who has at least applicant user access to SCM.

7.5.2.8 Advertising of requirements:

- If advertising of requirements is a mandatory part of the procurement procedure, the SCM practitioners will be notified of which requests require an advertisement.
- The details of the advertisement depend on the needs of the user and the media to be used – and whether any correspondence is to be archived or not.

7.5.2.9 Approvals, requisitions and signatures:

- A quotation record must exist in the request history – otherwise the approval process can not proceed.

7.5.2.10 Changes to requests:

- Reasons to change a request after it has been submitted:
  (i) The applicant has not supplied sufficient information or incorrect data was input
  (ii) The selected cost codes are incorrect
  (iii) The expected pricing differs marginally
  (iv) The expected costs differ radically from the quotations which have been received
  (v) As a result insufficient funds were reserved for the procurement

OPERATIONAL

7.5.2.11 User access to procurement processing:

- Use the following naming conventions for the creation of specialized directories:
  (i) SCMwork: for temporary files
  (ii) SCMselect: for extracting and filtering of a selection of suppliers
  (iii) SCMevaluation: for specialised S.S's which may be printed and/or archived

7.5.2.12 User options defined by the individual SCM user:

- Define own password for access to SCM functions.

7.5.2.13 Parameterisation of procurement actions:

- Define the primary SCM related procurement categories and name the actions to be followed for each process.
- The system will attempt to automatically identify the correct process to be utilised – and stamp this on the request record.
- Deviations will be recorded.
- Select the maximum total expenditure value for the selected procurement process restriction:
  (i) All procurement: default
  (ii) Optional all: choice of valid options for the same category
  (iii) SCM practitioner only
  (iv) T-store only: S or T options may be utilised if the user wishes to have different types of quotation forms for different categories of procurement
- ID allocated to process:
  (i) Q: quote
  (ii) B: Competitive bid process
  (iii) D: Direct purchase (no quotations required)
  (iv) C: Direct payment
  (v) N: Unique sequence number allocated to each subsequent option in the range
- Primary type of action:
  (i) Direct no quote: an authorised direct purchase, release to order processing, no further procurement actions necessary
  (ii) Written quotes: informal
  (iii) Formal written quote
  (iv) Competitive bidding
  (v) Approved by Council resolution

7.5.2.14 Updating of the registration details of existing creditors and/or suppliers:

- Select either:
  (i) An existing supplier/creditor number
  (ii) Number for a new supplier
  (iii) Special function key to access parameters for the allocation of a creditor number in respect of a new supplier
- Enter any further contact details.

- Maintain all other factors which might or might not influence the selection of a supplier.

7.5.2.15 Initial registration of suppliers:

- Send out registration forms to all current creditors (by mail, fax or email)
- Advertise in the newspaper
- Advertise on the web page
- Utilise a list of suppliers registered with another local authority or other body

7.5.2.16 Input of a request for goods or services – reserving of finance:

- When a new request is made a request master record is created – with the allocation of a sequence request number.
- Scan the official request, requisition form or approval from superior and capture allocated ID as the link to the document archiving.
- Enter requests against current or next financial year.
- Book authorised (or unauthorized) expenditure against the selected cost codes as a provisional cost in the nominated financial year.
- Authorise own expenditure up to a selected value.
- If total expect cost exceeds this limit the request can not be processed by SCM until a superior grants permission.
- Granting of authorisation may be done remotely – but the delegated authority must have access to the relevant financial system.
- Procurement values below a certain limit do not have to pass through SCM, and, on condition that the necessary authorisation of expenditure is given, the request may be immediately submitted to the order processing without passing through SCM. If the applicant is not authorised to sign-off the request, the request is first submitted to delegated authority for authorisation.
- All SCM requests are directed to an automatically selected process and a record is built up of all the steps that were taken during the procurement process.

7.5.2.17 Initial SCM actions:

- Check the system for any authorised incoming requests.
- Only requests for authorised expenditure will be shown to the SCM department.
- Check for requests in the queue which are not yet authorised. Where an applicant/SCM practitioner has limited authority to authorise expenditure an alternative authority is automatically selected by the system. The selected official may grant authorisation remotely, but should this person be unavailable, requests may end up lying unattended in the queue – which may impact on service delivery and/or the performance of the SCM department.

7.5.2.18 Report on outstanding requests for which quotations are required:

- Request a list of all outstanding requests which require quotations (no request for a quotation has as yet been issued nor have any quotations been received)

7.5.2.19 Report on outstanding requests for which advertising is required:

- Request a list of all outstanding requests which require advertising (no advertising history has as yet been updated)

7.5.2.20 Report on outstanding requests for which authorisation of expenditure is required:

- Request a list of all outstanding requests which still require authorisation of expenditure.

7.5.2.21 Remote authorisation of expenditure (by superiors):

- Grant remote authorisation from any terminal – with any log on – but under personal password control. Authorisation will not be allowed where the budget has been exceeded. The request value may be reduced, or an alternative cost code may be selected, or the budget must be adjusted before the request can be released to SCM (for any further processing).
- SCM will register that transaction with the next pick-up process. It is possible to email SCM to notify the department if the request is urgent – but the authorizing official will have to be operating on a Frontier terminal.

7.5.2.22 Creation and updating of a tender/contracts register:

- A master record should include at least:

- Primary ID: may be merely a sequence code
- Description: for look-up purposes
- Type code: tender, supplier, general, billing
- Tender number
- Date tender issued
- Contract number
- Date of signing of contract
- Approved contractor: supplier LA and creditor number, debtor LA and account number
- Type of contract: on total cost, on unit price
- Contract valid from date
- Contract valid to date
- Contract lapsed: Y/N
- Other particulars

- Include in initial request (where tender process is to be followed) the provisional tender ID in order to be able to monitor the process relevant to a specific naming convention. After approval, subsequent orders will then be linked to the same tender record for reporting purposes. Look-up's should be able to be performed against approved tenders by tender number, supplier, etc.
- A provisional contract record may be generated through either the initial capture of the request or the authorisation process.

7.5.2.23 Change to a request and/or cancellation of a procurement process:

- Request may be readily changed while in the input mode.
- Normal SCM practitioners should be able to change or cancel any request – with full history being maintained – but applicants and store-keepers should only be able to change/cancel their own requests. Changes/cancellations must free-up any provisional costing.

7.5.2.24 Advertising of requirements:

- Record that advertisements have been placed, name the media, and indicate the start and end dates

for which the adverts are to be displayed.

- Capture advertisement history through the standard SCM process.

8.5.2.25 Requests for quotations:

- The system must be able to assist the SCM practitioner in making a selection of potential suppliers and issuing a request for quotation for each supplier.

7.5.2.26 Generate quote for each selected potential supplier:

- Evaluate differences in order to establish whether they are acceptable or not if supplier is unable to provide the identical product/service and an alternative description is captured when quotation is received.

7.5.2.27 Capture of quotation details:

- Capture quotations by suppliers in order to be able to compare prices and points – and make a selection of the most worthy supplier.
- Match all responses to original request number.

7.5.2.28 On-going monitoring or request processes:

- Request a report for which quotations have not yet been received or quotations which have been received to date.

7.5.2.29 Evaluation of quotations and recording of results:

- System must allow the user to define a variety of Excel templates to be linked to specific procurement procedures and bearing any combination of known entities with which the evaluation is to be populated. They layout should have a heading bearing the request number, date and time of preparation of the evaluation report, description of the points awarded and the summary of points awarded arranged in columns by supplier in quotation value sequence.

7.5.2.30 Approvals, requisition and signatures:

- Submit final requisition once a supplier has been approved to the correct authority for signature – before an order is generated. This is referred to as the sign-off stage.
- Mark the quotation which was accepted after evaluation the quotation.
- The processing SCM practitioner may be authorised to give the approval without having to refer to another authority. In this event it is unnecessary to produce a paper trail as the SCM unit is perfectly familiar with the details of the approval – and, in the event of a query, there is a complete history of the procurement process stored against the request number.

7.5.2.31 Changes to requests:

- Store-keepers may only change requests relevant to their own store/s.
- Normal applicants may only change their own requests.
- SCM practitioners may change any request.
- Authorising officials may only change the requests of applicants under their domain.
- In all cases, request line items may only be changed. No line-items may be added or removed and no cost codes or primary descriptions may be modified. The reduction of the cost of all line-items to a zero value, will result in the entire request being cancelled.

PART 7.6: SAFEGUARDING OF SCM INFORMATION

7.6.1 RECORD KEEPING

PRINCIPLES

7.6.1.1 ACHIEVING OF PREDETERMINED TARGETS

- The Municipality must gather as much information as possible on a continuous basis to adapt changing targets and Government's reporting requests pertaining to SCM.
- Keeping complete records pertaining to SCM will assist the Municipality in their performance monitoring and reporting role.
- Apart from records, the Municipality should also maintain a proper filing system per case.

7.6.1.2 RECORD KEEPING HAS TO BE STRUCTURED AS FOLLOWS:

- The necessary information, to satisfy the internal and external reporting requirements, has to be kept in an orderly manner. The gathering of information and recording system must provide for the type of information required, deadlines and the allocation of duties and responsibilities.
- Record keeping does not replace the normal filing system that contains the hard copy of each case.
- The necessary records can be maintained either manually or electronically and does not have to be a formal register. As such a list or spreadsheet will suffice. Information can be incorporated into a single record where possible. The consolidation of the required returns and forwarding there has to be allocated to the responsible person or section.

7.6.1.3 THE FOLLOWING RECORDS SHOULD BE KEPT:

- **Record of gifts received per division**
  - (i) Name of official that received the gift.
  - (ii) Description of the gift.
  - (iii) Estimated value of the gift.
  - (iv) Name of person or organization that presented the gift.
  - (v) Pages must be numbered.
  - (vi) This record must preferably be in hard copy format.
- **Bid documents issued**
  - (i) Bid reference number.
  - (ii) Names of prospective bidders who requested documentation.
  - (iii) All inscriptions must be numbered.
- **List of bids received**
  - (i) Bid reference number.
  - (ii) Closing date.
  - (iii) Names of bids received.
  - (iv) All inscriptions must be numbered.
- **Record of verbal and written quotations**

  Verbal quotations:

(i) Date of the request received by the SCM Unit.

(ii) Particulars of end user, contact person and telephone number.

(iii) Registration number of the provider where applicable.

(iv) Names and contact details of prospective providers contacted.

(v) Price of quotes received.

(vi) Name of the successful provider.

(vii) Date of approval and the name and rank of the person/s that granted the approval.

(viii) Delegation number, if applicable.

(ix) Satisfactory/non-satisfactory completion of the service or delivery of the goods.

(x) Rotation indicator on prospective provider list.

(xi) All inscriptions must be numbered.

Written quotations:

(i) Date of the request received by the SCM Unit.

(ii) Particulars of end user, contact person and telephone number.

(iii) Requisition number.

(iv) Description of the requirement.

(v) Estimated value of the requirement.

(vi) Registration number of the provider where applicable.

(vii) Names and contact details of prospective providers contacted.

(viii) Price of quotes received.

(ix) Specification points, B-BBEEstatus, points for goals, and points for price are to be indicated separately.

(x) Total points scored.

(xi) Name of the successful provider.

(xii) Date of approval and the name and rank of the persons/body that granted the approval.

(xiii) Delegation number.

(xiv) Satisfactory/non-satisfactory completion of the service or delivery of the supply.

(xv) Rotation indicator on prospective provider list.

(xvi) All inscriptions must be numbered.

- **Record of all competitive bids**

(i) Date of the request received by the SCM Unit.

(ii) Particulars of end user, contact person and telephone number.

(iii) Requisition number.

(iv) Description of the requirement.

(v) Estimated value of the requirement.

(vi) Registration number of the provider where applicable.

(vii) Names and contact details of prospective providers contacted.

(viii) Price of quotes received.

(ix) Specification points, B-BBEE status, points for goals, and points for price are to be indicated

separately.

(x) Special conditions applicable

(xi) Site meeting records (minutes and all communique)

(xii) Total points scored.

(xiii) Name of the successful provider.

(xiv) Date of approval and the name and rank of the persons/body that granted the approval.

(xv) Delegation number.

(xvi) Negotiations

(xvii) Contract administration file

(xviii) Contract management file

(xix) Satisfactory/non-satisfactory completion of the service or delivery of the supply.

(xx) Rotation indicator on prospective provider list.

(xxi) All inscriptions must be numbered.

- **Record of ad hoc bids and/or deviations**

(i) Bid number.

(ii) Description of the requirement.

(iii) Particulars of end user, contract person and telephone number.

(iv) Date of advertisement.

(v) Date of advertisement for the extension of the closing date.

(vi) Closing date.

(vii) Extended closing date.

(viii) Validity period.

(ix) Extended validity period.

(x) Total number of bids received.

(xi) Late bids received, where applicable.

(xii) Name of successful bidder.

(xiii) Price of the successful bid.

(xiv) Points of the successful bid, received for specifications, price, equity and goals are to be indicated separately.

(xv) Total points scored by the successful bidder.

(xvi) Date of approval and the name of the body that granted the approval.

(xvii) Delegation number, if applicable.

(xviii) Date contract form is signed.

(xix) Satisfactory/non-satisfactory completion of the service or delivery of the goods.

(xx) Cancellation of bid or the cancellation of contracts, where applicable. Particulars are to include the reason for the cancellation, the date of approval, the name and rank of the person/body that granted the approval and the delegation number.

(xxi) All inscriptions must be numbered.

- **Record of Specific Term Contracts**

(i) Bid number.
(ii) Description of the requirement.
(iii) Contract term.
(iv) Particulars of end user, contract person and telephone number.
(v) Date of advertisement.
(vi) Date of advertisement for the extension of the closing date.
(vii) Closing date.
(viii) Extended closing date.
(ix) Validity period.
(x) Extended validity period.
(xi) Total of bids received.
(xii) Late bids received, where applicable.
(xiii) Name of successful bidder.
(xiv) Price of the successful bid.
(xv) Points of the successful bid, received for specifications, price, equity and goals are to be indicated separately.
(xvi) Total points scored by the successful bidder.
(xvii) Date of approval and the name of the body that granted the approval.
(xviii) Delegation number.
(xix) Date of contract form signed.
(xx) Satisfactory/non-satisfactory completion of the service or delivery of the goods.
(xxi) Cancellation of bid or the cancellation of contracts, where applicable. Particulars are to include the reason for the cancellation, the date of approval, the name and rank of the person/body that granted the approval and the delegation number.
(xxii) All inscriptions must be numbered.

- **Record of urgency and emergency procurement**

(i) Reference number.
(ii) Description.
(iii) Nature and the details of the urgency or emergency process followed.
(iv) Particulars of person or body that granted the approval.
(v) Date of approval.
(vi) Delegation number.
(vii) Financial implication.
(viii) All inscriptions must be numbered.

- **Record of complaints received from bidders or contractors**

(i) Date of complaint received.
(ii) Name of company or person complaining.
(iii) Reference of bid number.
(iv) Description.

(v) Details of complaint.

(vi) Action taken including the relevant dates.

(vii) Date of finalization.

(viii) All inscriptions must be numbered.

- **Record of instances of fraud or corruption**

(i) This record reflects the instances of fraud or corruption that occurred including fraud or corruption by government officials, prospective providers, contractors or any other legal person/entity. This record will reflect all actions taken in this regard.

- **Record of irregular, fruitless and wasteful expenditure**

(i) Date of request received.

(ii) Description.

(iii) Particulars of end user, contact person and telephone number.

(iv) Details of irregular, fruitless and wasteful expenditure.

(v) Action taken.

(vi) Date finalized.

(vii) Financial implication.

(viii) All inscriptions must be numbered.

- **Record of SCM circulars distributed within the Municipality**

(i) Circular number.

(ii) Description.

(iii) Date on which the circular was distributed to end users.

(iv) Date of confirmation of receipt of the circular.

(v) All inscriptions must be numbered.

PART 7.7: COMMENCEMENT

This Policy takes effect on the date on which it is adopted by Council.

VOLUME 8: INFRASTRUCTURE AND CONSTRUCTION PROCUREMENT

1 Scope

This policy establishes the Hessequa Municipality's policy for infrastructure procurement and delivery management in accordance with the provisions of the regulatory frameworks for procurement and supply chain management. It includes the procurement of goods and services necessary for a new facility to be occupied and used as a functional entity but excludes:

a) the storage of goods and equipment following their delivery to Hessequa Municipality which are stored and issued to contractors or to employees;

b) the disposal or letting of land;

c) the conclusion of any form of land availability agreement;

d) the leasing or rental of moveable assets; and

e) public private partnerships.

2 Terms, definitions and abbreviations

2.1 Terms and definitions

For the purposes of this document, the definitions and terms given in the standard and the following apply:

agent: person or organization that is not an employee of Hessequa Municipality that acts on **its** behalf in the application of this document

authorised person: the municipal manager or chief executive or the appropriately delegated authority to award, cancel, amend, extend or transfer a contract or order

conflict of interest: any situation in which:

a) someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfil his duties impartially,

b) an individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or

c) incompatibility or contradictory interests exist between an employee and the organization which employs that employee

contract manager: person responsible for administering a package on behalf of the employer and performing duties relating to the overall management of such contract from the implementer's point of view

family member: a person's spouse, whether in a marriage or in a customary union according to indigenous law, domestic partner in a civil union, or child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption

framework agreement: an agreement between an organ of state and one or more contractors, the purpose of which is to establish the terms governing orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged

gate: a control point at the end of a process where a decision is required before proceeding to the next process or activity

gateway review: an independent review of the available information at a gate upon which a decision to proceed or not to the next process is based

gratification: an inducement to perform an improper act

infrastructure delivery: the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

infrastructure procurement: the procurement of goods or services including any combination thereof associated with the acquisition, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

maintenance: the combination of all technical and associated administrative actions during an item's service life to retain it in a state in which it can satisfactorily perform its required function

operation: combination of all technical, administrative and managerial actions, other than maintenance actions, that results in the item being in use

order: an instruction to provide goods, services or any combination thereof under a framework agreement

organ of state: an organ of state as defined in section 239 of the Constitution of the Republic of South Africa

procurement document: documentation used to initiate or conclude (or both) a contract or the issuing of an order

principal: a natural person who is a partner in a partnership, a sole proprietor, a director a company established in terms of the Companies Act of 2008 (Act No. 71 of 2008) or a member of a close corporation registered in terms of the Close Corporation Act, 1984, (Act No. 69 of 1984)

standard: the latest edition of the Standard for Infrastructure Procurement and Delivery Management as published by National Treasury

working day: any day of a week on which is not a Sunday, Saturday or public holiday

2.2 Abbreviations

For the purposes of this document, the following abbreviations apply

CIDB: Construction Industry Development Board

SARS: South African Revenue Services

3 General requirements

3.1 Delegations

3.1.1 The **Council** of **Hessequa Municipality** hereby delegates all powers and duties to the Municipal Manager which are necessary to enable the Municipal Manager to:

a) discharge the supply chain management responsibilities conferred on accounting officers in terms of Chapter 8 to 11 of the Local Government Municipal Finance Management Act of 2003 and this document;

b) maximise administrative and operational efficiency in the implementation of this document;

c) enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this document; and

d) comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Local Government Municipal Finance Management Act of 2003 Act.

3.1.2 No departure shall be made from the provisions of this policy without the approval of the Municipal Manager of Hessequa Municipality

3.1.3 The Municipal Manager shall for oversight purposes:

a) within 30 days of the end of each financial year, submit a report on the implementation of this the policy and the equivalent policy of any municipal entity under the sole or shared control of the Hessequa Municipality, to the council of the Hessequa Municipality[3] / within 20 days of the end of each financial year, submit a report on the implementation of this policy to the board of directors, who must then submit the report to the municipal manager of Hessequa Municipality for submission to the council;

b) whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the Council, who must then submit the report to the municipal manager of Hessequa Municipality for submission to the council;

c) within 10 days of the end of each quarter, submit a report on the implementation of the policy to the Mayor; and

d) make the reports public in accordance with section 21A of the Municipal Systems Act of 2000.

3.2 Implementation of the Standard for Infrastructure Procurement and Delivery Management

3.2.1 Infrastructure procurement and delivery management shall be undertaken in accordance with the all applicable legislation and the relevant requirements of the latest edition if the National Treasury Standard for Infrastructure Procurement and Delivery Management.[5]

3.3 Supervision of the infrastructure delivery management unit

The Infrastructure Delivery Management Unit shall be directly supervised by the Chief Financial Officer

3.4 Objections and complaints

Persons aggrieved by decisions or actions taken in the implementation of this policy, may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action.

3.5 Resolution of disputes, objections, complaints and queries

3.5.1 The Municipal Manager shall appoint an independent and impartial person, not directly involved in the infrastructure delivery management processes to assist in the resolution of disputes between the Hessequa Municipality and other persons regarding:

a) any decisions or actions taken in the implementation of the supply chain management system;

b) any matter arising from a contract awarded within the Hessequa Municipality's infrastructure delivery management system; or

c) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

3.5.2 The Municipal Manager or Designated Person shall assist the person appointed in terms of 3.5.1 to perform his or her functions effectively.

3.5.3 The person appointed in terms of 3.5.1 shall:

a) strive to resolve promptly all disputes, objections, complaints or queries received; and

b) submit monthly reports to the Municipal Manager on all disputes, objections, complaints or queries received, attended to or resolved.

3.5.4 A dispute, objection, complaint or query may be referred to the Western Cape Provincial Treasury if:

a) the dispute, objection, complaint or query is not resolved within 60 days; or

b) no response is forthcoming within 60 days.

3.5.5 If the Western Cape Provincial Treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

4 Control framework for infrastructure delivery management

4.1 Assignment of responsibilities for approving or accepting end of stage deliverables

The responsibilities for approving or accepting end of stage deliverables shall be as stated in Table 1.

4.2 Gateway reviews

4.2.1 Gateway reviews for major capital projects above a threshold

4.2.1.1 Municipal Manager shall appoint a gateway review team in accordance with the provisions of clause 4.1.13.1.2 of the standard to undertake gateway reviews for major capital projects.

Table 1: Responsibilities for approving or accepting end of stage deliverables in the control framework for the management of infrastructure delivery

Stage		Person/Body assigned the responsibility for approving or accepting end of stage deliverables	Output	Project Value
No	**Name**			
0	Project initiation	*Council* accepts the initiation report	*Approved IDP*	*All major capital projects*
1	Infrastructure planning	*Director: Technical Services recommends and Municipal Manager Approves*	*infrastructure plan*	*All major capital projects*
2	Strategic resourcing	*Director: Technical Services*	*delivery and procurement strategy is approved*	*All major capital projects*
3	Pre-feasibility	*Director: Technical Services*	accepts the pre-feasibility report	Mandatory for projects above 4% the value of your total assets (FAR),
	Preparation and briefing	*Director: Technical Services*	*The strategic brief, as required, is accepted*	Mandatory for projects above 4% the value of your total assets (FAR),
4	Feasibility	*Director: Technical Services*	accepts the feasibility report	*All major capital projects*

	Concept and viability		*Director: Technical Services*	accepts the concept report	*All major capital projects*
5	Design development		*Director: Technical Services*	*Accepts the design development report is accepted*	*All major capital projects*
6	Design documentation	6A Production information	*Director: Technical Services* accepts the parts of the production information which are identified when the design development report is accepted as requiring acceptance	Detailed Design Report inclusive of all studies and surveys	*All major capital projects*
		6B Manufacture, fabrication and construction information	The contract manager accepts the manufacture, fabrication and construction information	Full Design including all construction drawings.	*All major capital projects*
Stage			**Person assigned the responsibility for approving or accepting end of stage deliverables**	**Output**	**Project Value**
No	**Name**				
7	Works		The contract manager certifies completion of the works or the delivery of goods and associated services	Project progress reports	*All major capital projects*
8	Handover		The owner or end user accepts liability for the works	Completion certification	*All major capital projects*
9	Package completion		The contract manager or supervising agent certifies the defects certificate in accordance with the provisions of the contract The contract manager certifies final completion in accordance with the provisions of the contract *[Director: Technical Services]* accepts the close out report	Project close out report	*All major capital projects*

5 Control framework for infrastructure procurement

5.1 The responsibilities for taking the key actions associated with the formation and conclusion of contracts including framework agreements above the quotation threshold shall be as stated in Table 2.

5.2 The responsibilities for taking the key actions associated with the quotation procedure and the negotiation procedure where the value of the contract is less than the threshold set for the quotation procedure shall be as follows:

a) Infrastructure Bid specifications Committee shall grant approval for the issuing of the procurement documents, based on the, contents of a documentation review report developed in accordance with the provisions of the standard;

b) the Infrastructure Bid adjudication Committee may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard or alternatively make a recommendation to the Municipal Manager to award if the value exceeds R10 million.

5.3 The responsibilities for taking the key actions associated with the issuing of an order in terms of a framework agreement shall be as stated in Table 3.

6 Infrastructure delivery management requirements

6.1 Institutional arrangements

6.1.1 Committee system for procurement

6.1.1.1 General

6.1.1.1.1 A committee system comprising the Infrastructure Bid Specification committee, Infrastructure Bid evaluation committee and Infrastructure Infrastructure Bid adjudication committee shall be applied to all procurement procedures where the estimated value of the procurement exceeds R200 000 and to the putting in place of framework agreements.

6.1.1.1.2 The Infrastructure Bid evaluation committee shall, where competition for the issuing of an order amongst framework contractors takes place and the value of the order exceeds the financial threshold for quotations, evaluate the quotations received.

6.1.1.1.3 The persons appoint in writing as technical advisors and subject matter experts may attend any committee meeting.

6.1.1.1.4 No person who is a political officer bearer, a public office bearer including any councillor of a municipality, a political advisor or a person appointed in terms of section 12A of the Public Service Act of 1994 or who has a conflict of interest shall be appointed to a Infrastructure Bid specification, Infrastructure Bid evaluation or Infrastructure Bid adjudication committee.

6.1.1.1.5 Committee decisions shall as far as possible be based on the consensus principle i.e. the general agreement characterised by the lack of sustained opposition to substantial issues. Committees shall record their decisions in writing. Such decisions shall be kept in a secured environment for a period of not less than five years after the completion or cancellation of the contract unless otherwise determined in terms of the National Archives and Record Services Act of 1996.

6.1.1.1.6 Committees may make decisions at meetings or, subject to the committee chairperson's approval, on the basis of responses to documents circulated to committee members provided that not less than sixty percent of the members are present or respond to the request for responses. Where the committee chairperson is absent from the meeting, the members of the committee who are present shall elect a chairperson from one of them to preside at the meeting.

6.1.1.2 Infrastructure Bid Specification committee

6.1.1.2.1 The Municipal Manager shall appoint in writing a standing committee to review the procurement documents and to develop a procurement documentation review report in accordance with clause 4.2.2.1 of the standard.

6.1.1.2.2 The Infrastructure Bid specification committee shall comprise of a Chairperson, Vice Chairperson and three (3) members of which one (1) is the responsible official and one (1) is a SCM official. The chairperson shall be an employee of Hessequa Municipality with requisite skills.

6.1.1.2.3 No member of, or technical adviser or subject matter expert who participates in the work of the Infrastructure Bid specification committee or a family member or associate of such a member, may tender for any work associated with the tender which is considered by these committees.

Table 2: Procurement activities and gates associated with the formation and conclusion of contracts above the quotation threshold

Activity		**Sub-Activity** (see Table 3 of the standard)		**Key action**	**Person assigned responsibility to perform key action**
1*	Establish what is to be procured	1.3 **PG1**	Obtain permission to start with the procurement process	Make a decision to proceed / not to proceed with the procurement based on the broad scope of work and the financial estimates.	**Infrastructure Bid Specification committee**
2*	Decide on procurement strategy	2.5 **PG2**	Obtain approval for procurement strategies that are to be adopted including specific approvals to approach a confined market or the use of the negotiation procedure	Confirm selection of strategies so that tender offers can be solicited	**Infrastructure Bid Specification committee**
3	Solicit tender offers	3.2 **PG3**	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Infrastructure Bid specification Committee
		3.3 **PG4**	Confirm that budgets are in place	Confirm that finance is available for the procurement to take place	**Infrastructure Bid Specification committee**
4	Evaluate tender offers	4.2 **PG5**	Obtain authorisation to proceed with next phase of tender process in the qualified, proposal or competitive negotiations procedure	Review evaluation report, ratify recommendations and authorise progression to the next stage of the tender process	*Infrastructure Bid evaluation Committee*
		4.7	Confirm recommendations contained in the	Review recommendations of the bid evaluation	Infrastructure Bid adjudication

		PG6	tender evaluation report	committee and refer back to Infrastructure Bid evaluation committee for reconsideration or make recommendation for award	Committee
5	Award contract	5.3 **PG7**	Award contract	Formally accept the tender offer in writing and issue the contractor with a signed copy of the contract	*Accounting Officer*
		5.5 **GF1**	Upload data in financial management and payment system	Verify data and upload contractor's particulars and data associated with the contract or order	*SCM*

***** Applies only to goods and services not addressed in a procurement strategy developed during stage 2 (strategic resourcing) of the control framework for infrastructure delivery management

Table 2 (concluded)

Activity		Sub-Activity		Key action	Person assigned responsibility to perform key action
6	Administer contracts and confirm compliance with requirements	6.4 **PG8A**	Obtain approval to waive penalties or low performance damages.	Approve waiver of penalties or low performance damages	*Project Manager*
		6.5 **PG8B**	Obtain approval to notify and refer a dispute to an adjudicator	Grant permission for the referral of a dispute to an adjudicator or for final settlement to an arbitrator or court of law	*Manager: Legal Services or delegated official*
		6.6 **PG8C**	Obtain approval to increase the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at the award of a contract or the issuing of an order up to a specified percentage[21]	Approve amount of time and cost overruns up to the threshold	*[Director: Technical Services or, depending upon the value, a* appropriately delegated authority *]*
		6.7 **PG8D**	Obtain approval to exceed the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at award of a contract or the issuing of an order by more than 20% and 30%, respectively	Approve amount of time and cost overruns above a the threshold	*[Municipal manager or, depending upon the value, a* appropriately delegated authority *]*
		6.8 **PG8E**	Obtain approval to cancel or terminate a contract	Approve amount	*Delegated authority*

		6.9 **PG8F**	Obtain approval to amend a contract	Approve proposed amendment to contract	*[Municipal Manager; or delegated authority]*

Table 3: Procurement activities and gates associated with the issuing of an order above the quotation threshold in terms of a framework agreement

Activity		**Key action**	**Person assigned responsibility to perform key action**
1 **FG1**	Confirm justifiable reasons for selecting a framework contactor where there is more than one framework agreement covering the same scope of work	Confirm reasons submitted for not requiring competition amongst framework contractors or instruct that quotations be invited	*Accounting Officer or designated official*
3 **FG2**	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	*Infrastructure Bid specifications Committee*
4 **FG3**	Confirm that budgets are in place	Confirm that finance is available so that the order may be issued	*Infrastructure Bid specifications Committee*
6 **FG4**	Authorise the issuing of the order	If applicable, review evaluation report and confirm or reject recommendations. Formally accept the offer in writing and issue the contractor with a signed copy of the order	*CFO or delegated official*

6.1.1.3 Infrastructure Bid evaluation committee

6.1.1.3.1 The Municipal Manager shall appoint in writing:

a) the persons to prepare the evaluation and, where applicable, the quality evaluations, in accordance with clauses 4.2.3.2 and 4.2.3.4 of the standard, respectively; and

b) the members of the evaluation committee.

6.1.1.3.2 The Infrastructure Bid evaluation committee shall comprise of a Chairperson, Vice Chairperson and three (3) members of which one (1) is the responsible official and one (1) is a SCM official. The chairperson shall be an employee of Hessequa Municipality with requisite skills.

6.1.1.3.3 The evaluation committee shall review the evaluation reports prepared in accordance with sub clause 4.2.3 of the standard and as a minimum verify the following in respect of the recommended tenderer:

a) the capability and capacity of a tenderer to perform the contract;

b) the tenderer's tax and municipal rates and taxes compliance status;

c) confirm that the tenderer's municipal rates and taxes and municipal service charges are not in arrears;

d) the Compulsory Declaration has been completed; and

e) the tenderer is not listed in the National Treasury's Register for Tender Defaulters or the List of Restricted Suppliers.

6.1.1.3.4 No tender submitted by a member of, or technical adviser or subject matter expert who participates in the work of the Bid documentation committee or a family member or associate of such a member, may be considered by the evaluation committee.

6.1.1.3.5 The chairperson of the evaluation committee shall promptly notify the Municipal Manager of any respondent or tenderer who is disqualified for having engaged in fraudulent or corrupt practices during the tender process.

6.1.1.4 Infrastructure Bid Adjudication Committee

6.1.1.4.1 The Infrastructure Bid adjudication committee shall comprise the following persons or their mandated delegate:

a) the Chief Financial Officer:
b) Vice chairperson (manager in the budget and treasury office reporting directly to the CFO)
c) At least one senior SCM practitioner who is an official of the Municipality;
d) 2 x officials in top management positions employed by Hessequa Municipality
e) Secretary (official from the SCMU with no voting rights);

6.1.1.4.2 No member of the Infrastructure Bid evaluation committee may serve on the Infrastructure Bid adjudication committee. A member of the bid evaluation committee may, however, participate in the deliberations of the Infrastructure Bid adjudication committee as a technical advisor or a subject matter expert.

6.1.1.4.3 The Infrastructure Bid adjudication committee shall:

a) consider the report and recommendations of the Infrastructure Bid evaluation committee and:

1) verify that the procurement process which was followed complies with the provisions of this document;

2) confirm that the report is complete and addresses all considerations necessary to make a recommendation;

3) confirm the validity and reasonableness of reasons provided for the elimination of tenderers; and

4) consider commercial risks and identify any risks that have been overlooked or fall outside of the scope of the report which warrant investigation prior to taking a final decision; and

b) refer the report back to the Infrastructure Bid evaluation committee for their reconsideration or make a recommendation to the authorised person on the award of a tender, with or without conditions, together with reasons for such recommendation.

6.1.1.4.4 The Infrastructure Bid adjudication committee shall consider proposals regarding the cancellation, amendment, extension or transfer of contracts that have been awarded and make a recommendation to the authorised person on the course of action which should be taken.

6.1.1.4.5 The Infrastructure Bid adjudication committee shall consider the merits of an unsolicited offer and make a recommendation to the municipal manager.

6.1.1.4.6 The Infrastructure Bid adjudication committee shall report to the municipal manager any recommendation made to award a contract to a tenderer other than the tenderer recommended by the evaluation committee, giving reasons for making such a recommendation.

6.1.1.4.7 The Infrastructure Bid adjudication committee shall not make a recommendation for an award of a contract or order if the recommended tenderer or framework contractor has:

a) made a misrepresentation or submitted false documents in competing for the contract or order; or

b) been convicted of a corrupt or fraudulent act in competing for any contract during the past five years.

6.1.1.4.8 The Infrastructure Bid adjudication committee may on justifiable grounds and after following due process, disregard the submission of any tenderer if that tenderer or any of its directors, members or trustees or partners has abused the delivery management system or has committed fraud, corruption or any other improper Conduct in relation to such system. The National Treasury and the Provincial Treasury shall be informed where such tenderers are disregarded.

6.1.2 Actions of an authorised person relating to the award of a contract or an order

6.1.2.1 Award of a contract

6.1.2.1 The municipal manager shall, if the value of the contract inclusive of VAT, is within his or her delegation, consider the report(s) and recommendations of the Infrastructure Bid adjudication committee and either:

a) award the contract after confirming that the report is complete and addresses all considerations necessary to make a recommendation and budgetary provisions are in place; or

b) decide not to proceed or to start afresh with the process.

6.1.2.2 The municipal manager shall immediately notify the Infrastructure Bid adjudication committee if a tender other than the recommended tender is awarded, save where the recommendation is changed to rectify an irregularity. Such person shall, within 10 working days, notify in writing the Auditor-General, the National Treasury and Western Cape Provincial Treasury, and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation.

6.1.2.3 Issuing of an order

The authorised person shall, if the value of an order issued in terms of a framework contract, is within his relevant, and either:

a) authorise the issuing of an order in accordance with the provisions of clause 4.25 of the standard; or

b) decide not to proceed or to start afresh with the process.

6.1.3 Conduct of those engaged in infrastructure delivery

6.1.3.1 General requirements

6.1.3.1.1 All personnel and agents of Hessequa Municipality shall comply with the requirements of the CIDB Code of Conduct for all Parties engaged in Construction Procurement. They shall:

a) behave equitably, honestly and transparently;

b) discharge duties and obligations timeously and with integrity;

c) comply with all applicable legislation and associated regulations;

d) satisfy all relevant requirements established in procurement documents;

e) avoid conflicts of interest; and

f) not maliciously or recklessly injure or attempt to injure the reputation of another party.

6.1.3.1.2 All personnel and agents engaged in Hessequa Municipality's infrastructure delivery management system shall:

a) not perform any duties to unlawfully gain any form of compensation, payment or gratification from any person for themselves or a family member or an associate;

b) perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;

c) strive to be familiar with and abide by all statutory and other instructions applicable to their duties;

d) furnish information in the course of their duties that is complete, true and fair and not intended to mislead;

e) ensure that resources are administered responsibly;

f) be fair and impartial in the performance of their functions;

g) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;

h) not abuse the power vested in them;

i) not place themselves under any financial or other obligation to external individuals or firms that might seek to influence them in the performance of their duties;

j) assist Hessequa Municipality in combating corruption and fraud within the infrastructure procurement and delivery management system;

k) not disclose information obtained in connection with a project except when necessary to carry out assigned duties;

l) not make false or misleading entries in reports or accounting systems; and

m) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise.

6.1.3.1.2 An employee or agent may not amend or tamper with any submission, tender or contract in any manner whatsoever.

6.1.3.2 Conflicts of interest

6.1.3.2.1 The employees and agents of Hessequa Municipality who are connected in any way to procurement and delivery management activities which are subject to this policy, shall:

a) disclose in writing to the employee of the Hessequa Municipality to whom they report, or to the person responsible for managing their contract, if they have, or a family member or associate has, any conflicts of interest; and

b) not participate in any activities that might lead to the disclosure of Hessequa Municipality proprietary information.

6.1.3.2.2 The employees and agents of Hessequa Municipality shall declare and address any perceived or known conflict of interest, indicating the nature of such conflict to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to a procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

6.1.3.2.3 Agents who prepare a part of a procurement document may in exceptional circumstances, where it is in Hessequa Municipality's interest to do so, submit a tender for work associated with such documents provided that:

a) Hessequa Municipality states in the tender data that such an agent is a potential tenderer;

b) all the information which was made available to, and the advice provided by that agent which is relevant to the tender, is equally made available to all potential tenderers upon request, if not already included in the scope of work; and

c) the Infrastructure Bid specification committee is satisfied that the procurement document is objective and unbiased having regard to the role and recommendations of that agent.

6.1.3.3 Evaluation of submissions received from respondents and tenderers

6.1.3.3.1 The confidentiality of the outcome of the processes associated with the calling for expressions of interest, quotations or tenders shall be preserved. Those engaged in the evaluation process shall:

a) not have any conflict between their duties as an employee or an agent and their private interest;
b) may not be influenced by a gift or consideration (including acceptance of hospitality) to show favour or disfavour to any person;

c) deal with respondents and tenderers in an equitable and even-handed manner at all times; and

d) not use any confidential information obtained for personal gain and may not discuss with, or disclose to outsiders, prices which have been quoted or charged to Hessequa Municipality.

6.1.3.3.2 The evaluation process shall be free of conflicts of interest and any perception of bias. Any connections between the employees and agents of Hessequa Municipality and a tenderer or respondent shall be disclosed and recorded in the tender evaluation report.

6.1.3.3.3 Hessequa Municipality personnel and their agents shall immediately withdraw from participating in any manner whatsoever in a procurement process in which they, or any close family member, partner or associate, has any private or business interest.

6.1.3.4 Non-disclosure agreements

Confidentiality agreements in the form of non-disclosure agreements shall, where appropriate, be entered into with agents and potential contractors to protect Hessequa Municipality's confidential information and interests.

6.1.3.5 Gratifications, hospitality and gifts

6.1.3.5.1 The employees and agents of Hessequa Municipality shall not, directly or indirectly, accept or agree or offer to accept any gratification from any other person including a commission, whether for the benefit of themselves or for the benefit of another person, as an inducement to improperly influence in any way a procurement process, procedure or decision.

6.1.3.5.2 The employees and agents of Hessequa Municipality as well as their family members of associates shall not receive any of the following from any tenderer, respondent or contractor or any potential contractor:

a) money, loans, equity, personal favours, benefits or services;

b) overseas trips; or

c) any gifts or hospitality irrespective of value from tenderers or respondents prior to the conclusion of the processes associated with a call for an expression of interest or a tender.

6.1.3.5.3 The employees and agents of Hessequa Municipality shall not purchase any items at artificially low prices from any tenderer, respondent or contractor or any potential contractor at artificially low prices which are not available to the public.

6.1.3.5.4 All employees and agents of Hessequa Municipality may for the purpose of fostering inter-personal business relations accept the following:

a) meals and entertainment, but excluding the cost of transport and accommodation;

b) promotional material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc;

c) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate;

d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, provided that such tickets are not of a recurrent nature; and

e) gifts in kind other than those listed in a) to d) which have an intrinsic value greater than R350 unless they have declared them to the Municipal Manager.

6.1.3.5.5 Under no circumstances shall gifts be accepted from prospective contractors during the evaluation of calls for expressions of interest, quotations or tenders that could be perceived as undue and improper influence of such processes.

6.1.3.5.6 Employees and agents of Hessequa Municipality shall without delay report to the Municipal Manager any incidences of a respondent, tenderer or contractor who directly or indirectly offers a gratification to them or any other person to improperly influence in any way a procurement process, procedure or decision.

6.1.3.6 Reporting of breaches

Employees and agents of Hessequa Municipality shall promptly report to the Municipal Manager any alleged improper conduct which they may become aware of, including any alleged fraud or corruption.

6.1.4 Measures to prevent abuse of the infrastructure delivery system[27]

The Municipal Manager shall investigate all allegations of corruption, improper conduct or failure to comply with the requirements of this policy against an employee or an agent, a contractor or other role player and, where justified:

a) take steps against an employee or role player and inform the National Treasury and Western Cape Provincial Treasury of those steps;

b) report to the South African Police Service any conduct that may constitute a criminal offence;

c) lodge complaints with the Construction Industry Development Board or any other relevant statutory council where a breach of such council's code of conduct or rules of conduct are considered to have been breached;

d) cancel a contract if:

   1) it comes to light that the contractor has made a misrepresentation, submitted falsified documents or has been convicted of a corrupt or fraudulent act in competing for a particular contract or during the execution of that contract; or

   2) an employee or other role player committed any corrupt or fraudulent act during the tender process or during the execution of that contract.

6.1.5 Awards to persons in the service of the state

6.1.5.1 Any submissions made by a respondent or tenderer who declares in the Compulsory Declaration that a principal is one of the following shall be rejected:

a) a member of any municipal council, any provincial legislature, or the National Assembly or the National Council of Provinces;

b) a member of the board of directors of any municipal entity;

c) an official of any municipality or municipal entity;

d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

e) a member of the accounting authority of any national or provincial public entity; or

f) an employee of Parliament or a provincial legislature.

6.1.5.2 The notes to the annual financial statements of the municipality shall disclose particulars of an award of more than R 2000 to a person who is a family member of a person identified in 6.1.5.1 or who has been in the previous 12 months. Such notes shall include the name of the person, the capacity in which such person served and the amount of the award.

6.1.6 Collusive tendering

Any submissions made by a respondent or tenderer who fails to declare in the Compulsory Declaration that the tendering entity:

a) is not associated, linked or involved with any other tendering entity submitting tender offers; or

b) has not engaged in any prohibited restrictive horizontal practices including consultation, communication, agreement, or arrangement with any competing or potential tendering entity regarding prices, geographical areas in which goods and services will be rendered, approaches to determining prices or pricing parameters, intentions to submit a tender or not, the content of the submission (specification, timing, conditions of contract etc.) or intention to not win a tender shall be rejected.

6.1.7 Placing of contractors under restrictions

The approved SCM Abuse and Blacklisting Policy will address contractor restrictions

6.1.8 Complaints

6.1.8.1 All complaints regarding the Hessequa Municipality's infrastructure delivery management system shall be addressed to the Municipal Manager. Such complaints shall be in writing.

6.1.8.2 The Manager: Legal Services shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the Municipal Manager who will decide on what action to take.

6.2 Acquisition management

6.2.1 Unsolicited proposal

6.2.1.1 The Hessequa Municipality is not obliged to consider unsolicited offers received outside a normal procurement process but may consider such an offer only if:

a) the goods, services or any combination thereof that is offered is a demonstrably or proven unique innovative concept;

b) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement is vested in the person who made the offer;

c) the offer presents a value proposition which demonstrates a clear, measurable and foreseeable benefit for Hessequa Municipality;

d) the offer is in writing and clearly sets out the proposed cost;

e) the person who made the offer is the sole provider of the goods or service; and

f) Hessequa Municipality finds the reasons for not going through a normal tender processes to be sound.

6.2.1.2 The Municipal Manager may only accept an unsolicited offer and enter into a contract after considering the recommendations of the Infrastructure Bid adjudication committee if:

a) the intention to consider an unsolicited proposal has been made known in accordance with Section 21A of the Municipal Systems Act of 2000 together with the reasons why such a proposal should not be open to other competitors, an explanation of the potential benefits for the Municipality and an invitation to the public or other potential suppliers and providers to submit their comments within 30 days after the notice;

b) Hessequa Municipality has obtained comments and recommendations on the offer from the National Treasury and Western Cape Provincial Treasury;

c) the tender committee meeting which makes recommendations to accept an unsolicited proposal was open to the public and took into account any public comments that were received and any comments and recommendations received from the National Treasury and Western Cape Provincial Treasury; and

d) the provisions of 6.2.1.3 are complied with.

6.2.1.3 The Municipal Manager shall, within 7 working days after the decision to award the unsolicited offer is taken, submit the reasons for rejecting or not following the recommendations to the National Treasury, the Western Cape Provincial Treasury and Auditor General. A contract shall in such circumstances not be entered into or signed within 30 days of such submission.

6.2.2 Tax and rates compliance

6.2.2.1 SARS tax clearance

6.2.2.1.1 No contract may be awarded or an order issued where the value of such transaction exceeds R 30 000, unless a tenderer or contractor is in possession of an original valid Tax Clearance Certificate issued by SARS provided that the tenderer is not domiciled in the Republic of South Africa and the SARS has confirmed that such a tenderer is not required to prove their tax compliance status.

6.2.2.1.2 In the case of a partnership, each partner shall comply with the requirements of 6.2.2.1.1.

6.2.2.1.3 No payment shall be made to a contractor who does not satisfy the requirements of 6.2.2.1.2. An employee of Hessequa Municipality shall upon detecting that a tenderer or contractor is not tax compliant, immediately notify such person of such status.

6.2.2.1.4 Notwithstanding the requirements of 6.2.2.1.1 and 6.2.2.1.3 the following shall apply, unless a person who is not tax compliant indicates to the Manager: SCM, Assets & Insurance that it intends challenging its tax compliance status with SARS,

a) a non-compliant contractor shall be issued with a first warning that payments in future amounts due in terms of the contract may be withheld, before the authorising of any payment due to such contractor;

b) before authorising a further payment due to a non-compliant contractor who has failed to remedy its tax compliance status after receiving a first warning, a second and final warning shall be issued to such contractor;

c) no payments may be released for any amounts due in terms of the contract due to a non-compliant contractor if, after a period of 30 calendar days have lapsed since the second warning was issued, the non-compliant contractor has failed to remedy its tax compliance status.

6.2.2.1.5 Hessequa Municipality may cancel a contract with a non-compliant contractor if such a contractor fails to remedy its tax compliance status after a period of 30 calendar days have lapsed since the second warning was issued in terms of 6.2.2.1.4c).

6.2.2.2 Municipal rates and taxes

No contract may be awarded to a tenderer who, of the principals of that tenderer, owes municipal rates and taxes or municipal service charges to any municipality or a municipal entity and are in arrears for more than 3 months.

6.2.3 Declarations of interest

Tenders and respondents making submissions in response to an invitation to submit a tender or a call for an expression of interest, respectively shall declare in the Compulsory Declaration whether or not any of the principals:

a) are an employee of Hessequa Municipality or in the employ of the state; or

b) have a family member or a business relation with a person who is in the employ of the state.

6.2.4 Invitations to submit expressions of interest or tender offers

6.2.4.1 All invitations to submit tenders where the estimated value of the contract exceeds R200 000 including VAT, except where a confined tender process is followed, and expressions of interest shall be advertised on Hessequa Municipality's website and on the National Treasury eTender Publication Portal. Advertisements shall be placed by the delegated official within the SCM unit

6.2.4.2 Advertisements relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.4.1 be advertised on the CIDB website. Advertisements shall be placed by the designated official within the SCM unit.

6.2.4.3 Where deemed appropriate by the Manager: SCM, Assets & Insurance an invitation to tender and a call for an expression of interest shall be advertised in suitable local and national newspapers and the Government Tender Bulletin as directed by such person. Advertisements shall be placed by the designated person within the SCM unit.

6.2.4.4 Such advertisements shall be advertised for a period of at least 14 days before closure, except in urgent cases when the advertisement period may be shortened as determined by the Municipal Manager.

6.2.4.5 Invitations to submit expressions of interest or tender offers shall be issued not less than 10 working days before the closing date for tenders and at least 5 working days before any compulsory clarification meeting. Procurement documents shall be made available not less than 7 days before the closing time for submissions.

6.2.5 Publication of submissions received and the award of contracts[35]

6.2.5.1 The designated official with the SCM unit shall publish within 10 working days of the closure of any advertised call for an expression of interest or an invitation to tender where the estimated value of the contract exceeds R200 000 including VAT on the municipality's or municipal entity's website, the names of all tenderers that made submissions to that advertisement, and if practical or applicable, the total of the prices and the preferences claimed. Such information shall remain on the website for at least 30 days.

6.2.5.2 The designated official with the SCM unit shall publish within 30 working days of the award of a contract the following on Hessequa Municipality's website

a) the contract number;

b) contract title;

c) brief description of the goods, services or works;

d) the total of the prices, if practical;

e) the names of successful tenderers and their B-BBEE status level of contribution;

f) duration of the contract; and

g) brand names, if applicable.

6.2.5.3 The designated official with the SCM unit shall submit within 7 working days of the award of a contract the information required by National Treasury on the National Treasury eTender Publication Portal regarding the successful and unsuccessful tenders.

6.2.5.4 The award of contracts relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.5.3 be notified on the CIDB website. The notification shall be made by the designated official with the SCM unit.

6.2.6 Disposal committee

The approved Asset Management Policy address disposal management

6.3 Reporting of infrastructure delivery management information

The Manager: SCM, Assets & Insurance shall submit any reports required in terms of the standard to the National Treasury or Western Cape Provincial Treasury.

7 Infrastructure procurement

7.1 Procurement documents

7.1.1 Hessequa Municipality's preapproved templates for Part C1 (Agreements and contract data) of procurement documents shall be utilised to obviate the need for legal review prior to the awarding of a contract. All modifications to the standard templates shall be approved by the Municipal Manager prior to being issued for tender purposes.

7.1.2 Disputes arising from the performance of a contract shall be finally settled in a South African court of law.

7.1.3 The Municipal Declaration and returnable documents contained in the standard shall be included in all tenders for:

a) consultancy services; and

b) goods and services or any combination thereof where the total of the prices is expected to exceed R10 m including VAT.

7.3 Developmental procurement

The approved Preferential Procurement Policy of Council will address developmental aspects

7.4 Payment of contractors

Hessequa Municipality shall settle all accounts within 30 days of invoice or statement as provided for in the contract.

7.5 Approval to utilise specific procurement procedures

7.5.1 Prior approval shall be obtained for the following procurement procedures from the following persons, unless such a procedure is already provided for in the approved procurement strategy:

a) The municipal manager shall authorise the use of the negotiated procedure above the thresholds provided in the standard.

b) The Municipal Manager shall authorise the approaching of a confined market except where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in the standard and which can be dealt with or the risks relating thereto arrested within 48 hours; and

c) The Manager of the department shall authorise the proposal procedure using the two-envelope system, the proposal procedure using the two-stage system or the competitive negotiations procedure[45].

7.5.2 The person authorised to pursue a negotiated procedure in an emergency is the Manager of the Department.

7.6 Receipt and safeguarding of submissions

7.6.1 A dedicated and clearly marked tender box shall be made available to receive all submissions made.

7.6.2 The tender box shall be fitted with a lock and the key kept by a designated official within the SCM unit. Such personnel shall be present when the box is opened on the stipulated closing date for submissions.

7.7 Opening of submissions

7.7.1 Submissions shall be opened by an opening panel comprising at least two designated officials in the SCM unit who have declared their interest or confirmed that they have no interest in the submissions that are to be opened.

7.7.2 The opening panel shall open the tender box at the stipulated closing time and:

a) sort through the submissions and return those submissions to the box that are not yet due to be opened including those whose closing date has been extended;

b) return submissions unopened and suitably annotated where:

1) submissions are received late, unless otherwise permitted in terms of the submission data;

2) submissions were submitted by a method other than the stated method,

3) submissions were withdrawn in accordance with the procedures contained in SANS 10845-3; and.

4) only one tender submission is received and it is decided not to open it and to call for fresh tender submissions;

c) record in the register submissions that were returned unopened;

d) open submissions if received in sealed envelopes and annotated with the required particulars and read out the name of and record in the register the name of the tenderer or respondent and, if relevant, the total of prices including VAT where this is possible;

e) record in the register the name of any submissions that is returned with the reasons for doing so;

f) sign the entries into the register; and

g) stamp each returnable document in each tender submission.

7.7.3 A designated member of the opening panel shall initial the front cover of the submission and all pages that are stamped in accordance with the requirements of 7.7.3g).

7.7.4 Respondents and tenderers whose submissions are to be returned shall be afforded the opportunity to collect their submissions.

7.7.5 Submissions shall be safeguarded from the time of receipt until the conclusion of the procurement process.

7.8 Use of another organ of state's framework agreement

Hessequa Municipality may make use of another organ of state's framework contract which has been put in place by means of a competitive tender process and there are demonstrable benefits for doing so. The municipal manager shall make the necessary application to that organ of state to do so.

7.9 Insurances

7.9.1 Contractors shall be required to take out all insurances required in terms of the contract.

7.9.2 The insurance cover in engineering and construction contracts for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract shall in general not be less than the value stated in Table 4, unless otherwise directed by the municipal manager.

7.9.3 Lateral earth support insurance in addition to such insurance shall be take out on a case by case basis.

Table 4: Minimum insurance cover[52]

Type of insurance	Value
Engineering and construction contracts - loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract	Not less than R20 million
Professional services and service contracts - death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract or damage to property	Not less than R10 million
Professional indemnity insurance	geotechnical, civil and structural engineering: R5,0 million electrical, mechanical and engineering: R3,0 million architectural: R5,0 million other R3,0 million

7.9.4 The insurance cover in professional services and service contracts for damage to property or death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract shall not be less than the value stated in Table 4 for any one event unless otherwise directed by the municipal manager.

7.9.5 SASRIA Special Risk Insurance in respect of riot and associated risk of damage to the works, Plant and Materials shall be taken out on all engineering and construction works.

7.9.5 Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount not less than the value stated in Table 4 in respect of each claim, without limit to the number of claims, unless otherwise directed by the in relation to the nature of the service that they provide.

7.9.6 Hessequa municipality shall take out professional indemnity insurance cover where it is deemed necessary to have such insurance at a level higher than the levels of insurance commonly carried by contractors.

7.9.7 Where payment is to be made in multiple currencies, either the contractor or Hessequa Municipality should be required to take out forward cover. Alternatively, the prices for the imported content should be fixed as soon as possible after the starting date for the contract.

7.10 Written reasons for actions taken

7.10.1 Written reasons for actions taken shall be provided by the Chairperson of the Infrastructure Bid adjudication Committee.

7.10.2 The written reasons for actions taken shall be as brief as possible and shall as far as is possible, and where relevant, be framed around the clauses in the:

a) SANS 10845-3, *Construction procurement - Part 3: Standard conditions of tender,* and, giving rise to the reason why a respondent was not short listed, prequalified or admitted to a data base; or

b) SANS 10845-4, *Construction procurement - Part 4: Standard conditions for the calling for expressions of interest;*

as to why a tenderer was not considered for the award of a contract or not awarded a contract.

7.10.3 Requests for written reasons for actions taken need to be brief and to the point and may not divulge information which is not in the public interest or any information which is considered to prejudice the legitimate commercial interests of others or might prejudice fair competition between tenderers.

7.11 Request for access to information

7.11.1 Should an application be received in terms of Promotion of Access to Information Act of 2000 (Act 2 of 2000), the "requestor" should be referred to Hessequa municipality's Information Manual which establishes the procedures to be followed and the criteria that have to be met for the "requester" to request access to records in the possession or under the control of Hessequa municipality.

7.11.2 Access to technical and commercial information such as a comprehensive programme which links resources and prices to such programme should be refused as such information provides the order and timing of operations, provisions for time risk allowances and statements as to how the contractor plans to do the work which identifies principal equipment and other resources which he plans to use. Access to a bill of quantities and rates should be provided in terms of the Act.

BIBLIOGRAPHY

Item	DESCRIPTION	DOCUMENT
1	**Supreme legislation**	▪ Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)
2	**Primary legislation**	▪ Municipal Structures Act, 1998 (Act 117 of 1998) - MSTA ▪ Municipal Systems Act, 2000 (Act 32 of 2000) - MSA ▪ Municipal Finance Management Act, 2003 (Act 56 of 2003) - MFMA ▪ Division of Revenue Act, annual – DORA ▪ Employment Equity Act, 1998 (Act 55 of 1998) - EEA ▪ Inter-Governmental Fiscal Relations Act, 1997 (97 of 1997) - IGFRA ▪ Inter-Governmental Relations Framework Act, 2005 (Act 13 of 2005) - IGRFA ▪ Labour Relations Act, 1995 (Act 66 of 1995) - LRA ▪ Local Government Municipal Property Rates Act, 2004 (Act 6 of 2004) - PRA ▪ National Environmental Management Act, 1998 (Act 107 of 1998) and Regulations - NEMA ▪ Occupational Health and Safety Act, 1993 (Act 85 of 1993) - OHSA ▪ Skills Development Act, 1998 (Act 97 of 1998) – SDA ▪ Skills Development Levies Act, 1999 (Act 9 of 1999) – SDLA ▪ Environmental Conservation Act, 1989 (Act 73 of 1989) – ECA ▪ National Environment Management Waste Act, 2008 (Act 59 of 2008) - NEMWA ▪ Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998) – MDA ▪ Water Services Act, 1997 (Act 108 of 1997) - WSA ▪ Electricity Regulation Act, 2006 (Act 4 of 2006) - ERA ▪ Municipal Fiscal Powers and Functions Act – MFPFA
3	**Subordinate legislation**	▪ 2001 (GG 22328)MSA Regulations, ▪ MSA Municipal Planning and Performance Management Regulations, 2001 (GG 22605) ▪ MSA Performance Regulations, 2006 (GG 29089) ▪ MSA Disciplinary Regulations for Senior Managers, 2011 (GG 34213) ▪ Municipal Investments Regulations, 2005 (GG 27431) ▪ Municipal PPP Regulations, 2005 (GG 27431) ▪ Municipal SCM Regulations, 2005 (GG 27636) ▪ Municipal Regulations on Debt Disclosure, 2007 (GG 29966) ▪ Municipal Asset Transfer Regulations [MATR], 2008 (GG 31346) ▪ Municipal Budget and Reporting Regulations, 2008 (GG32141) ▪ Environmental Impact Assessment Regulations, 2006 (GG 28753) ▪ NEMA Regulations, 2001 (GG 22960)
4	**Complimentary and functional legislation**	▪ Basic Conditions of Employment, 1997 (Act 75 of 1997) - BCoE ▪ Broad-Based Black Economic Empowerment Act (B-BBEEA), 2003 (Act 53 of 2003) - BBEEE ▪ Companies Act, 1973 ▪ Competition Act, 1998 (Act 89 of 1998) ▪ Construction Industry Development Board Act, 2000 (Act 38 of 2000) and Regulations

Item	DESCRIPTION	DOCUMENT
		▪ Construction Regulation R1010 of 2003 (for compliance to occupational health and safety within the construction industry) ▪ Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and Regulations – PPPFA ▪ Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) ▪ Promotion of Access to Information Act, 2000 (Act 2 of 2000) - PAIA ▪ Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) - PAJA ▪ Public Audit Act, 2004 (Act 25 of 2004) ▪ Public Office Bearers Act, 1998 (Act 20 of 1998) ▪ State Information Technology Agency Act, 1998 (Act 88 of 1998) – SITA ▪ Engineering Professions Act, 2000 (Act 46 of 2000) – EPA ▪ Criminal Procedures Act, 1977 (Act 51 of 1977) – CPA ▪ Fire Arms Act, 2000 (Act 60 of 2000) ▪ National Road Traffic Act, 1996 (Act 93 of 1996) – NRTA ▪ National Small Business Act, 1996 (Act 102 of 1996) ▪ Prevention of Illegal Squatting Act, 1998 (Act 19 of 1998) ▪ Private Securities Companies Act, 2001 (Act 56 of 2001) ▪ Fire Brigade Services Act, 1987 (Act 99 of 1987) ▪ National Heritage Resources Act, 1999 (Act 25 of 1999) ▪ National Council for Library and Information Act, 2001 (Act 6 of 2001) ▪ Provincial library Service Ordinance, 1981 (Ord 16 of 1981) ▪ Museums Ordinance, 1975 (Ord 8 of 1975) ▪ Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) ▪ Land Use Planning Ordinance, 1985 (Ord 15 of 1985) - LUPO
5	**Policies**	▪ Land Disposal Policy, 2012 ▪ SCM Policy, 2013 ▪ Property rates Policy ▪ Asset management Policy ▪ Cash and Investment Policy ▪ Tariff Policy ▪ Budget Policy ▪ Virement Policy ▪ Funding and reserve Policy ▪ Indigent Policy ▪ Borrowing Policy ▪ Free basic services Policy ▪ Grant-in-Aid Policy ▪ Transfer Payments Policy ▪ PPPFA Policy
6	**Guidelines**	▪ National Treasury Supply Chain Management: A Guide for Accounting Officers of Municipalities and Municipal Entities

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		Mpumalanga steam and boiler works v MEC Public Works	22023/08	30/09/2010	PPPFA, points inconsistently applied
		Nelson Mandela Bay Department v Afrisec Strategic Solutions	1014 (SE)	2008	*Inter alia* reference to: The scope of bids, contracts and contract requirements in bid adjudication, contract management and contract administration.
		Ninham Shand v Municipal Manager City of Matlosana	(25911/2007)	25/04/08	
		Ortlieb & Associates v Camdeboo Local Municipal Council and Others	0408 (E)	2005	*Inter alia* reference to: appointment of members by the Financial Officer in bid adjudication, contract management and contract administration.
		R v Portsmouth City Council Ex parte George Austin (Builders)		6/06/95	
		Renaissance Security and Cleaning Services v Rustenburg Local Department	(1811/2007)	19/08/08	
		Simunye developers cc v Lovedale Public FET college	3059/2010	9/12/10	Successful bidder did not score highest points
		Sizabonke civils cc t/a Pilcon projects v Zululand District Department	10878/2009	2009	PPPFA regulations re functionality inconsistent with the PPPFA

Item	DESCRIPTION	DOCUMENT			
		Tetra Mobile Radio (Pty) Ltd v MEC, Department of Works	2008 (1) SA 438	2008	PAIA in relation to tender documents
		Total Computer Services v Municipal Manager, Potchefstroom Local Department	SA 346	2008	
		Viking Pony Africa Pumps v Hidro-Tech Systems	SA 80	2010	Fronting
		ZandbildMinister of Transport and Public Works, Western Cape v Zanbuild Construction) -	*(68/2010*	*11/03/11*	Interpretation *of construction guarantee – whether liability of guarantor is limited to the contractor's liability under the construction contract – or whether it is for the full amount of the guarantee on demand by the employer.*

Case	Summary
Minister of Transport and Public Works, Western Cape v Zanbuild Construction	*On 11 March 2011 the Supreme Court of Appeal dismissed the appeal in this matter and confirmed the judgment of the Western Cape High Court.* *The matter arose from two construction contracts in terms whereof Zanbuild Construction undertook to build two pathology laboratories for the Western Cape Department of Public Works at the Eben Dönges Hospital in Worcester and the TC Newman Hospital in Paarl.* *As required by the two contracts, Zanbuild arranged with Absa Bank to issue two construction guarantees in favour of the Department. Subsequently the Department cancelled the construction contracts and demanded payment under the guarantees from Absa. But the SCA agreed with the Western Cape High Court that, on a proper interpretation of the guarantees, the Department was not entitled to payment. That is why the appeal was dismissed with costs.*
Viking Pony Africa Pumps (Pty) Ltd t/a Tricom Africa v Hidro-Tech Systems (Pty) Ltd and Another	*On Tuesday, 23 November 2010 the Constitutional Court delivered judgment concerning the nature and extent of an organ of state's duty to act when presented with evidence that an enterprise to which it had awarded a tender, taking into account its Black shareholding, had provided fraudulent information about the true nature of its Black shareholding.* *The applicant (Viking) and the first respondent (Hidro-Tech) compete for tenders to supply and install equipment for water and sewerage treatment works from the City of Cape Town (the City). During 2006 and 2007, Viking was awarded more tenders than Hidro-Tech. Hidro-Tech discovered that this had happened because Black people held 70% of Viking's shares.* *Hidro-Tech lodged a complaint with the City that the historically disadvantaged majority shareholders in Viking were mere tokens. Contrary to the spirit, purport and object of the Constitution, the Procurement Act and its regulations, they neither exercised control in Viking nor actively participated in its management to the degree commensurate with their shareholding and their positions as directors. They further alleged that Viking's profits were being routed to a sister company that is exclusively white-owned. Hidro-Tech asked the City to investigate these allegations of fronting.* *The City commissioned a database managing firm to investigate. The firm simply confirmed that the shareholding reflected in Viking's tender documents was correct. The allegation of fronting was not investigated.* *The applicable regulation required the City to "act" upon detecting any fraud in the procurement process. The High Court and the Supreme Court of Appeal held that the word "act" included the power to investigate and that the word "detect" must be given a wide meaning. Both these Courts had ordered the City to act against Viking. Viking appealed to this Court.*

	The unanimous Court, per Mogoeng J, concluded that the reason for the enactment of the Procurement Act and its regulations was to ensure that organs of state do not remain passive when credible allegations of fronting or tender irregularities come to light. The organ of state responsible for the tender is, upon becoming aware of alleged irregularities, under an obligation to investigate the matter properly. *Mogoeng J also concluded that the City was duty-bound to act against Viking and the steps it took amounted to a failure to investigate the complaint properly.* *Finally the Constitutional Court concluded that the order of the Supreme Court of Appeal was aimed at directing the City to investigate the allegations and that this was the proper order. The Court accordingly ordered the City to investigate the allegations and provisionally ordered it to pay the costs of both Viking and Hidro-Tech.*
Total Computer Services v Municipal Manager, Potchefstroom Local Department	*On 19 October 2007 the Transvaal High Court reviewed and set aside the award of the tender for a law enforcement administration support system made by the first (MM of Potchefstroom Municipality) and second respondent (Potchefstroom Municipality) to the third respondent (Inyanga Trading). The award of said tender is declared to have been unlawful and unfair. The first and second respondent are directed to consider the competing tenders of the applicant (Total Computer Services) and third respondent in accordance with all applicable laws, regulations and the procurement policy of the first respondent in accordance with the requirements of section 217 of the Constitution.* *In early 2007 the Municipal manager issued notice number 12/2007 inviting tenders in terms of section 83 of the Local Government: Municipal Systems Act 2000 for a law enforcement administration support system. The invitation to tender reflected the closing time and date for the submission of the tenders to be at 12h00 on Friday 16 February 2007. Tender documents, containing details of the specifications and conditions for tender, were available at the department of public safety of the Municipality. The notice stated that tenderers were required to supply the necessary information in order to comply with the requirements of section 83 of the Local Government: Municipal Systems Act 32 of 2000 and that the tender was subject to the conditions of the Preferential Procurement Policy Framework Act 5 of 2000 as well as the Preferential Procurement Regulations 2001. It was also stated that the Municipality's Procurement Policy ("the Policy") would also be applicable as well as the Supply Chain Regulations of the Local Government: Municipal Finance Management Act.* *Five tenderers, including TCS and Inyanga, submitted tenders to the Municipality. One of the five was eliminated because of a fatal noncompliance with the requirements. This left four tenderers to be considered for selection. The process of evaluation and adjudication of the tenders involved three steps. Firstly, tenders were evaluated by an evaluation committee, chaired by the Municipality's senior administrative officer. The report and recommendations of the evaluation committee were thereafter forwarded to a second committee, the adjudication committee, chaired by the chief financial officer of the Municipality. The adjudication committee then submitted its report*

	with recommendations to the first respondent, the Municipal manager, who made a final decision on the award of the tender. *TCS has raised four specific grounds of review. The first is that the Municipality erred in the allocation of points by not allocating them in accordance with the preference point system guidelines set out in thePolicy and the tender documentation; and that it erred further in not awarding the contract to the tenderer who scored the highest points (namely TCS) and the action accordingly contravened section 2(1)(f) of the Preferential Procurement Policy Framework Act 5 of 2000. The second ground of review is that Inyanga's tender was not acceptable and was invalid. The third ground was that the award was made prematurely, contrary to clause 49 of the Policy. The fourth ground was that the Municipality acted improperly or unfairly by rejecting TCS's appeal on the ground that it was lodged out of time. The parties are in dispute about whether a 21 day or 14 day appeal period applied.* *The submission of TCS, stood far ahead of Inyanga and was the tenderer who scored the highest points and was thus entitled to be awarded the contract.* *Firstly, the administrative action was taken without considering the relevant considerations postulated by the points formula. Irrelevant considerations, such as those gleaned from the tender documentation, were also taken into account. Secondly, the action contravened the Preferential Procurement Policy Framework Act in that the contract was awarded to a tenderer who did not score the highest points. Thirdly, the action was not rationally connected to the information that was before the adjudication committee or the Municipal manager. The information on price, company profile, preference and reference sites simply did not justify the award of the highest number of points to Inyanga. For these reasons the decision must be set aside. Objectively speaking there was no rational connection between the outcome of the decision and the facts upon which the decision was based.* *The second ground of review is that the tender submitted by Inyanga was not a valid or acceptable tender. The Preferential Procurement Policy Framework Act 5 of 2000 defines an acceptable tender as a tender which in all respects complies with the specifications and conditions of tender as is set out in the tender document. TCS claims that because Inyanga tendered for four fixed amounts instead of three the tender was unacceptable. It also reiterated the point about the failure to include documentation relating to company profile and reference sites.* *The Municipality had discretion to accept the tender, in the exercise of its discretion, even if it was not signed. A failure to sign did not automatically invalidate the tender. The Municipality is similarly entitled to accept a tender, in terms of paragraph 7, even where the attached forms and annexures are not completed.* *Even if one were to concede that the applicant's rights to appeal should have been exercised within 14 days, the Policy of the second respondent represented (perhaps negligently) that a 21 day period*

	was allowed. Accepting, as I do, that regulation 49 imposes a duty which is directory rather than mandatory and is of limited internal effect, it would be unjust, and contrary to the spirit and purport of the constitutional right to just administrative action, to permit the second respondent to restrict the content and ambit of the right to appeal expressly contained in the substantive provisions of its policy, and thereby to deprive the applicant of its right to appeal through reliance on its own negligent misrepresentation. The applicant reasonably relied first and foremost on the Policy of the second respondent with whom it hoped to contract, rather than the provisions of a regulation of more general and confusing application. *In the final analysis, therefore, I am persuaded that the failure to afford TCS an opportunity to appeal within 21 days of notification and the final award of the tender within the 21 day period contrary to the provisions of clause 49(5) taken together constitutes procedural unfairness further justifying the setting aside of the award.*
Tetra Mobile Radio (Pty) Ltd v MEC, Department of Works	*The SCA today upheld an appeal by Tetra Mobile Radio against the decision of the Pietermaritzburg High Court. The High Court had dismissed Tetra Mobile's application for an order directing the MEC of the Department of Works of the Province of KwaZulu Natal and other tender bodies to make available to it certain documentation required for purposes of noting an appeal to the Appeals Tribunal against the decision of a Central Procurement Committee.* *Tetra Mobile had been an unsuccessful tenderer for the award of a contract for the maintenance of repeater networks in KwaZulu Natal. The tender had been awarded to another company, Infotrunk (Pty) Limited. The request for documentation was refused by the MEC of the Department of Works and other tender bodies on the basis that the documents were confidential. The SCA held that fairness dictated that the documents that were before the Central Procurement Committee be made available to Tetra Mobile, so as to enable it to prosecute a fair hearing before the Appeals Tribunal. The order made in the High Court was accordingly set aside and replaced with an order directing that the required documents be made available to Tetra Mobile. To meet the concern raised by the respondents in relation to confidentiality, the SCA ordered that, where confidentiality is claimed the document concerned should be marked and identified, and the reason given as to why non-disclosure is claimed in respect thereof.*
Sizabonke civils cc t.a Pilcon projects v Zululand District Department	*The KwaZulu-Natal High Court reviewed and set aside the award of the contract by the Zululand District Municipality (first respondent) to NRB Construction & Hire CC (second respondent). Regulations 8(2) to 8(7) of the Preferential Procurement Regulations, 2001 are inconsistent with section 2(1)(b) of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and are invalid. The costs of this application shall be paid by the first, second and third respondents jointly and severally the one paying the others to be absolved, which costs shall include the costs occasioned by the employment of two counsel where this was done.* *The matter arose from the award of a contract lay the first respondent to the second respondent after a tendering process. The tender document was based on regulations made by the third respondent pursuant to the powers given to him under the Preferential Procurement Policy Framework Act, No, 5 of 2000 ("the Act"). S 2 of the Art provides that "An organ of state must*

determine its preferential procurement policy and implement it within the following framework". Municipalities are organs of state. As such, the Act applies to the award of the contract. The Applicant (Sizabonke Civils) submitted a tender but was unsuccessful.

The applicant complained that regulations 8(2) to 8(7) ("the impugned regulations") and in particular regulation 8(3), are inconsistent with s 2(1)(b) of the Act It said that by including functionality in the 90 points which are required to be allocated for price in the Act, less than the full 90 points will be allocated for price alone. This means that the minimum number of 90 points cannot be allocated for price as is required by tie Act.

The applicant first seeks to review and set aside the contract awarded pursuant to the tender process. It is clear that, regardless of the legality or otherwise of the regulations, the tender document prepared by the first respondent setting out how points would be awarded made provision for a maximum of 70 points to be awarded for price. It is also clear that the first respondent, in awarding the contract to the second respondent, utilised this as the basis for awarding points. That being the case, the first respondent acted contrary to the provisions of the Act which required a minimum of 90 points, as opposed to a maximum of 70 points, to be allocated for price. The award of the contract was therefore contrary to the provisions of the Act. This is so even though the first respondent clearly complied with the impugned regulations. The award of the contract must therefore be reviewed and set aside if an application is brought at the instance of a party who has the requisite locus standi. This brings me to the submissions made on behalf of the second respondent.

The second respondent stated in its affidavit deposed to on 19 February 2010 that Brainwave was not awarded the contract for two reasons. First, the evaluating committee and the adjudicating committee considered that the price was too low to satisfy them that the work could be completed at that price. Secondly, they were not satisfied that brainwave had undertaken work of a similar nature before. It is by no means inconceivable, therefore, that if 90 points had been awarded to Brainwave for price, the first respondent would nevertheless have invoked regulation 9 and awarded the contract to the applicant if it was the tenderer with the next highest number of points, it certainly cannot be assumed, in the light of the second respondent's own evidence referred to above, that the applicant would not have been awarded the contract.

All of this means that the applicant has a direct and substantial interest in the relief sought it in the application and, accordingly, has the requisite locus standi to apply to set aside of the contract awarded as a result of the Invalid tender process. The award of the contract by the first respondent to the second respondent must therefore be reviewed and set aside.

The declaration of invalidity of the impugned regulations would therefore, on the evidence before me, not bring the tendering process to a halt or otherwise affect it. No "dangerous gap" would be left by a declaration of invalidity. It is therefore also not necessary to suspend the operation of any order setting aside the impugned regulations so as to give sufficient time to the third respondent to make

	replacement regulations. *A similar situation obtains In relation to the reconsideration and re-evaluation of the tender in question. It may be that the first respondent has resources, needs or priorities which differ from those which obtained at the time the contract was put out to tender. For his court to require it to reconsider the tender would likewise amount to an unwarranted interference in the affairs of an organ of state by this court, in any event, the tender could not be reconsidered in its present form since the framework of the first respondent for evaluating it cannot be utilised for the reasons dealt with above. The first respondent must be free to make decisions which rest within its discretion once the award of the contract is set aside. No further order is therefore either necessary or indeed, desirable.*
Simunye developers cc v Lovedale Public FET college	*On 9 December 2010 the Eastern Cape High Court dismissed the application for an interim interdict pending the outcome of review proceedings.* *The applicant (Simunye Developers CC) unsuccessfully tendered for a contract to renovate one of the student hostels at the first respondent's (Lovedale Public Fet College) Zwelitsha campus. Although the applicant scored the highest number of points, the tender was awarded to the second respondent (VDZ Construction). The applicant now seeks an interim order interdicting and restraining the respondents from continuing with the work pending the outcome of a judicial review of the first respondent's decision to award the tender to the second respondent.* *During August 2010 the first respondent published a notice inviting tenders for renovations to student hostels at its Zwelitsha campus. The said notice stated, inter alia, that the principles of the Preferential Procurement Policy Framework Act, Act no 5 of 2000 ("the PPPFA") would apply and that "a tender's submission will be evaluated according to the sum or Award of Points in respect of the tender value and the status of the enterprise". The points would be scored as follows: "90 Points for Price, 4 Points for HDI status, 2 Points for female, Points for Youth; 2 Points for Disability". The tender notice further more stated that "the lowest or any tenderer need not necessarily be accepted and that this project may not be awarded to the most favourable Tenderer if it is deemed that that Tenderer is overcommitted."* *Both the applicant and the second respondent achieved points in excess of the required minimum and were accordingly regarded as responsive, thus qualifying for further adjudication. The applicant, being the lowest tenderer, scored the highest namely 94 points and the second respondent scored 91.81.* *Upon investigating the quality of the applicant's workmanship in other projects they had spoken to a school principal who was clearly dissatisfied with the quality of work. On the basis of these findings they recommended that the second correspondent be appointed.* *The first respondent was still enjoined in terms of s. 217 of the Constitution to contract for goods or services, in accordance with a system which is fair, equitable, transparent, competitive and costs*

	effective. Even though the first respondent was not under a legal compulsion to procure in terms of the PPPFA, it has voluntarily adopted the scoring formulae, adjudication principles and criteria provided for in that Act and prospective tenderers had submitted their tenders on the understanding that their tenders would be adjudicated in accordance therewith. The tender could only have been fair and transparent if their tenders were adjudicated in terms of those stated criteria and principles. There can therefore in my view be little doubt that a failure on the part of the first respondent to have substantially complied with those principles would serve to vitiate any resultant decision. *The decision of the first respondent to appoint the second respondent was indeed an administrative act and subject to judicial review in terms of the PAJA.* *Section 2(f) of the PPPFA provides that a contract must be awarded to the tenderer who scores the highest points unless objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another tenderer. Paragraph (d) relates to specific goals and paragraph (e) stipulates that any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a tender. Regulation 9 of the regulations made in terms of the PPPFA similarly provides that a contract may be awarded to a tender that did not score the highest number of points on reasonable and justifiable grounds.* *It was on the basis of these facts that the first respondent had taken a decision not to award the tender to the applicant despite the fact that it had scored the highest number of points.* *Any individual or entity that submits a tender in response to a tender invitation which clearly stipulates* *applicable specifications and conditions, must be taken as having submitted to that procedure and must accept that the relevant information, either provided by the tenderers or unearthed by the organ of state through independent investigation, is invariably considered in secret and without any reference to the tenderers.* *In the light of the doubtful prospects of success in the review application and the balance of convenience being so comprehensively in favour of the respondents, there is no justifiable basis on which the court can exercise its discretion in favour of the applicant.* *In the circumstances I am of the view that the applicant has failed to establish that it is entitled to interim relief which it seeks in terms of its notice of motion and that that part of the application must fail.*
Renaissance Security and Cleaning Services v Rustenburg Local	*On 28 June 2007 in the High Court of South Africa Bophuthatswana Provincial Division the application was dismissed with costs.* *During November 2006 the Municipality published a tender. The Municipality invited potential bidders to submit a tender for the provision of security services.*

Department	*The applicant was also not informed that its bid was unsuccessful. The tender was awarded to the second respondent.* *The applicant attacks the award of the tender on the following grounds:* *(a) The tender expired but still the tender was awarded to the second respondent.* *(b) The duration of the tender awarded was invalid; and* *(c) The award of the bid to the second highest scorer was irregular.* *The applicant could not have believed that the time for acceptance of bids had expired. If it had thought so, there was no reason to confirm its prices. What would the purpose have been in doing so if the bid had expired? There is no merit in this contention.* *The reference to 3 years in the contract concluded was a mistake. A mistake which the Municipality correctly recognises must be rectified. It can do this with the consent of the second respondent. The functus officio rule does not apply to the rectification of a contract.* *The Accounting Officer agreed with the conclusion of the Bid Evaluation Committee and the Bid Adjudication Committee. He says that the applicant is not the best party to provide security services to the Municipality and that its track record is not good enough.* *In the premises the applicant has not established that it has a reasonable prospect that a court of review will interfere with the tender process and the award. It is therefore unnecessary to deal with the prayer that the applicant, be permitted to continue with the monthly contract which was lawfully cancelled.*
R v Portsmouth City Council ex p	*The respondent council had a large stock of local authority housing. By 1991/92 the maintenance and improvement of the housing was being carried out partly by private contractors and partly by the council's own Portsmouth Contract Services (PCS). In early 1991 the council wanted work to be carried out under three contracts known as the maintenance contract, the improvement contract and the BISF contract. Accordingly, in March 1991 the council placed a Notice in the Official Journal of the European Community which advertised the maintenance contract. Local advertisements were also placed for the contracts in May, August and November 1991. In April 1992 the council decided to extend the improvement contract from 12 months to 18 months and to increase its value.* *By July 1992 tenders had been received for the maintenance and BISF contracts and invitations to tender had been sent out for the improvement contracts. The council then recognised that if the PCS was not awarded a substantial part of the work, although it would save money on the housing revenue account, it would lose money at the expense of the general fund because of redundancy costs. As a result the Council decided in September 1992 to award PCS 40 per cent of the maintenance contract, 60 percent of the improvement contract and all the work under the BISF contract. No mention had been made beforehand of the cost-saving considerations due to PCS's redundancy costs.*

Mr Coles and George Austin were the lowest tenderers for different parts of the maintenance contract as were Colwick Builders under the improvement contract. They sought judicial review of the decision to award the work to PCS on the basis that the council had breached reg. 20 of the 1991 Public Works Contracts Regulations and Art. 29 of the Public Works Directive (Directive 71/305) which the regulations were designed to implement. Regulation 20(1) provides that "a contracting authority shall award a public works contract on the basis of the offer which (a) offers the lowest price or (b) is the most economically advantageous ..." Regulation 20(3) provides that where "a contracting authority intends to award a public works contract on the basis of the offer which is the most economically advantageous it shall state the criteria on which it intends to base its decision ..." Article 29 of the Public Works Directive is in similar terms.

Keene J, at first instance, held that the 1991 Regulations only applied where the whole public procurement process had been commenced after the date when they came into force, namely 21 December 1991. See post p. 676C-H. On this basis the 1991 Regulations did not apply to the maintenance or the BISF contract, but they did apply to the improvement contract because, although the improvement contract had initially been advertised in 1991, the changes to it in April rendered it a materially different and, therefore, new contract. Consequently, Colwick Builders' claims were based on the 1991 Regulations whereas the claims of Mr Coles and George Austin could only be based on the Works Directive which was of direct effect as against the council. See post p. 681D-F. Keene J held that the council was in breach of reg. 20(3) and Art. 29(2) because it had failed to specify the cost-saving criteria on which it based its decision, but that this did not oblige the council to award the contract on the basis of the lowest price. See post pp. 682G to 683F. Since Colwick Builders had not specified the failure to specify the criteria as the relevant breach in its letter before action in accordance with the pre-condition in reg. 31(5)(a) its claim was dismissed. See posts pp. 692B to 693B; and pp. 694E to 695B. There was, however, no such requirement in the Directive and the claims of Mr Coles and George Austin were ordered to continue as if begun by writ. Keene J further held that the applicants had no cause of action under the Local Government, Planning and Land Act 1980 and rejected the claim that the council's decision was ultra vires.

The applicants appealed (Colwick Builders relying on the Regulations and Mr Coles and Austin Builders on the Directive) contending that the contract should have been awarded to them because they had submitted the lowest price.

The council's breach of reg. 20(3) by not stating in the contract documents the cost savings relating to PCS prevented it from awarding the improvement contract on the economically advantageous basis. Consequently, the council was obliged to award the contract on the lowest price basis (Commission of the European Communities v Kingdom of Belgium (Case C-87/94) [1996] ECR 1-2043, which was given after Keene J's judgment applied). Colwick Builders' letter before action to the council did comply with reg. 31(5)(a) in this respect and accordingly its appeal was allowed. See post pp. 699E to 670B.

Although the council was under a similar obligation to award the maintenance contract on the lowest

	price basis pursuant to Art. 29(2) of the Public Works Directive, the award of the work to the PCS was not a contract within the meaning of the Directive because there was no contract for pecuniary consideration. The council could not contract with itself. Although the 1991 Regulations expressly applied to in-house contracts it was not possible to construe the Directive to make good the lacuna. Since Mr Coles and George Austin could only rely on the Directive, their appeal was dismissed on this ground (which had been raised for the first time in the Court of Appeal).
Ortlieb & Associates v Camdeboo Local Municipal Council and Others	*On 31 March 2005 the Eastern Cape High Court set aside the appointment of Gerald Olckers (second respondent) in terms of the tender to supply the services of a Human Resources Mentor to Camdeboo Local Municipal Council (first respondent).* *The matter arose from a tender publication calling for "service providers" to submit tenders for the supplying of the "service" of Human Resources Mentor. It is common cause, however, that Councillor W. du Plessis (seventh respondent), in his capacity as a councillor of Camdeboo Local Municipal Council (first respondent), acted as chairman of the committee which awarded the contract to Gerald Olckers (second respondent). Ortlieb and Associates (applicant) averred therefore that by virtue of Councillor W. du Plessis (seventh respondent's) role in the proceedings in contravention of s117 (MFMA) the aforesaid decision taken by the committee was a nullity and fell to be set aside.* *The probabilities are, in any event, overwhelmingly against respondents' contention that this was not a tender proposal for the rendering of the service of mentor by a service provider. An applicant responding to the tender advertisement would have been furnished by Camdeboo Local Muncipal Council (first respondent), as indeed was applicant, with a wealth of documentation relating to the requirements of the tender. Sealed bids were called for and procedures relating to the awarding of tenders were then followed. It is relevant that the acting Municipal Manager (fourth respondent) refers to Gerald Olckers (second respondent) having "reduced his tender to bring it within budget". This is hardly language indicative of an employment contract. It is inconceivable that Camdeboo Local Municipal Council (first respondent) would have adopted the tender procedure had it, and in all probability also the Department, not been of the view that such procedure was indeed applicable and required in the circumstances. And having regard to the provisions of s 110(1)(a) of the Finance Management Act as well as to the various relevant definitions of, inter alia, "service provider" and "service delivery agreement" contained in s 1 of the Municipal Systems Act, it is clear that such procedure was indeed correctly adopted. Reference may also be made in this regard to the provisions of s 110(1)(d) of the Finance Management Act read with the provisions of s 80(1)(b); s 76(b)(v) and part 3 of chapter 8 of the Municipal Systems Act. It would appear from these provisions as well that the Camdeboo Local Municipal Council (first respondent) was obliged to adopt the tender procedure but it is not necessary to express a final opinion in this regard in view of the inexplicable silence of Camdeboo Local Municipal Council (first respondent) as to the basis upon which it chose to adopt the tender procedure. What is abundantly clear is that the Camdeboo Local Municipal Council (first respondent) required a service provider to provide the services of a Human Resources Mentor and, this being the case, the provisions of chapter 11 of the Municipal Finance Management Act and in particular s 117 thereof were applicable. These provisions were*

	violated by the presence of Councillor W. du Plessis (seventh respondent) as chairman of the committee dealing with the tender bids. In all the circumstances I am satisfied that no genuine dispute of fact exists. *Accordingly the proceedings of the tender Bid Committee were a nullity and the application for an order setting aside the appointment of second respondent must succeed.*
Ninham Shand v Municipal Manager City of Matlosana	*On 25 April 2008 the Transvaal Provincial High Court of South Africa dismissed the application and ordered the Ninham Shand (applicant) to pay the costs of the respondent on a party and party scale, such costs to include costs consequent upon the employment of two counsel.* *On 18 December 2006 first respondent (Municipal Manager: City of Matlosana) by public notice invited tenders for consulting engineering services for the design, tender documentation and project management of the construction of 14400 toilets in Jouberton, Kanana, Khuma and Tigane. The closing date of these tenders was 18 January 2007 at 11:00.* *In the invitation to tender it is specifically recorded that the tenders will be adjudicated according to the second respondent's (City of Matlosana) supply chain management policy based on the Preferential Procurement Policy Framework Act 5 of 2000 as well as the BEE Act 53 of 2003.* *Applicant then received a letter from the second respondent dated 14 March 2007. In the said letter the second respondent informs the applicant that it amends the criteria for the adjudication of the tenders. In terms of the amended criteria the ratio of the adjudication points between "price", "functionality" and "preferential" is altered.* *On 6 May 2007 a new invitation was published inviting tenders for the same project. The said tenders had to be submitted on 21 May 2007 before 11:00. The new invitation materially differed from the contents of the first invitation especially with reference to the adjudication system.* *It is common cause that the tender process in which the applicant participated was stopped by the respondents and no award was made to any of the tenderers. The respondents readvertised the tender.* *The readvertised tender was awarded to the third, fourth, fifth and sixth respondents on 5 June 2007. The four successful tenderers after their appointment as successful tenderers immediately commenced with the project. By September 2007 they were almost halfway through the project and at that time, it was anticipated that the project will be completed during December 2007.* *The probabilities are that at this point in time, which is about four months after the anticipated completion date of the project, the third to sixth respondents have completed the project or are about to complete the said project. Prayers 1, 2, 3 and 4 of the applicant's amended notice of motion, if granted, will be of no practical effect to any of the parties as they have been overtaken by events. As stated earlier, the project under consideration is about to be completed or it has already*

	been completed. *Applying the principles enunciated in the abovementioned cases, this court cannot grant the prayers contained in prayers 1, 2, 3 and 4 of the amended notice of motion. Even if, assuming the applicant has made out a case for the setting aside of the decisions of the first and second respondents, granting the prayers referred to above, will have no practical effect to any of the parties. Instead, such an order will cause chaos and prejudice all the parties involved in this dispute, including those people who are not parties to this litigation but are supposed to benefit from the project.* *The applicant, in my view, should have followed a different route for a remedy, eg obtain an interdict at a much earlier stage.*
Nelson Mandela Bay Municipality v Afrisec Strategic Solutions	*In Nelson Mandela Bay Municipality v Afrisec Strategic Solutions (Pty) Ltd the court, at the instance of the Municipality, set aside agreements concluded with the preferred bidder (Afrisec) on the ground that they exceeded the scope of the bid invitation and the specifications advertised. The Municipality had called for bids for an asset risk analysis and design of a security master plan for the Municipality. A main agreement was concluded with Afrisec and thereafter a number of "scope of work agreements" (SOW's). When the Municipality subsequently called for bids for the provision of security alarm systems and goods, Afrisec threatened the Municipality with litigation unless the Municipality withdrew the invitation. Afrisec argued that it had, in terms of the main agreement with the Municipality, certain rights with regard to not only the analysis, design and monitoring of the security master plan, but also its implementation. The court agreed with the Municipality that only one of the agreements concluded with Afrisec (SOW 1) conformed to the bid invitation and confirmed its validity. All the other agreements, including the main agreement, exceeded the scope of the bid invitation, the bid submitted by Afrisec and the letter accepting such bid. Afrisec submitted a bid of about R2.7 million, but at the date of the application to court the final agreements were already in the region of R12 million. In light thereof the court found that the conclusion was "inescapable": the relevant agreements were invalid because they exceeded the scope of the original bid. The Municipality's bid invitation did not state that the invitation was for the implementation of the general security plan. Afrisec's bid price was for the design of the security plan in the sum of R803 000 and R80 000 per month for monitoring. Its bid price did not contain a fixed or ascertainable amount for the implementation of the general security plan. The Municipality moreover accepted Afrisec's bid for the analysis and design of a security plan and not for its implementation.* *Bid specifications can, of course, also be said to create a legitimate expectation on the part of bidders that the Municipality calling for bids will consider and evaluate bids based on the specifications advertised. The Supreme Court of Appeal in Metro Projects CC and Another v Klerksdorp Local Municipality and Others stressed the value of Municipalities abiding by the criteria (specifications) provided in bid documents. In this case, a contract was awarded to a bidder who had been given an opportunity by a Municipal official to supplement its bid after the closing date to ensure acceptance. The court held that this deception "stripped the [bidding] process of an essential element of fairness: the equal evaluation of [bids]. Where subterfuge and deceit subvert the essence of a [bidding] process, participation in it is prejudicial to every one of the competing [bidders]*

	whether it stood a chance of winning the [bid] or not". The Procurement Act also defines an "acceptable tender" as one that "in all respects complies with the specifications and conditions of tender as set out in the tender document". In this respect, the court admitted that there are degrees of compliance with any standard and it is notoriously difficult to assess whether less than perfect compliance falls on one side or the other of the validity divide". In the present case, however, the court found that "there is no difficulty. The offer put before the decision-making body was not the one made in the second respondent's bid. It was not one elicited by the specifications and bid conditions". The award of the contract to the second respondent was as a result set aside.
Mpumalanga steam and boiler works v MEC Public Works	*On 25 August 2010 in the North Gauteng High Court the decision of the Chairperson of the Adjudication Committee to award a tender contract to Tokologo Technical Assignments CC was reviewed and set aside. The contract entered into between the Minister of Public Works flowing from the decision made is set aside. In the event that the first respondent or the Department of Public Works invites tenders in respect of repairs and maintenance of the electrical and mechanical installations of Zonderwater Prison in the future, it is ordered that such be evaluated, adjudicated and awarded by committees comprised of persons other than those who were members of the committees involved in the process resulting in the award of the tender contract to Tokologo Technical Assignments CC on 16 April 2008. The Director of Public Prosecutions is requested to investigate whether any conduct on the part of the members and/or the employees of Tokologo Technical Assignments CC in relation to the submission, evaluation and adjudication of its tender application in respect of contract PTO 08/012 constitutes criminal conduct warranting prosecution.* *During February 2008, the Minister issued the tender in question. At closing six tenders were received. A Bid Evaluation Committee was established comprising several members with varying appropriate expertise in engineering, procurement and project management. The bids were evaluated in accordance with the preferential procurement policy framework and the relevant procurement strategy. Tokologo scored 97 points while the applicant scored 87,20 points in accordance with the points system and for that reason the decision was taken to award the contract to Tokologo.* *The main grounds of review raised by the applicant allege irrationality and unfairness by the Committee in the allocation of the points and thus the decision to award the tender. It points to various alleged inconsistencies in the awarding of points in respect of previous similar project experience, resources, the method statement and execution plan, the project structure and statutory compliance. The applicant places much emphasis on the fact that its tender price was the lowest of all the bids and was R1,6 million lower than that of Tokologo.* *The issue upon which the matter is to be resolved relates to Tokologo's Tax Clearance Certificate. It has accordingly become practice for invitations to tender emanating from the public sector to require tenderers to submit such certificates.* *The applicant took issue with the attitude of the second respondent, pointing out that no bidder's bid may be accepted if it does not submit a valid Tax Clearance Certificate and that the bid*

documentation quite evidently regards the requirement as paramount. It contended that the respondents should have verified the validity (or not) of the bidders' certificates, more specifically and importantly at least the one submitted by the preferred bidder before the tender is finally awarded. It added that the respondents had more than sufficient time to verify the validity of the certificate and challenged the respondents to verify the validity of the certificate before the matter was heard. It reserved the right to file a supplementary affidavit dealing further with the issue. The fact that the successful tenderer had submitted a false certificate ought to dispose of the application.

Be that as it may, the respondents' later investigations left them satisfied that the certificate was valid. No doubt they took some comfort from the fact that SARS had as recently as in June 2010 issued Tokologo with another certificate. It was unlikely to have done that had it been aware of any prior fraud or irregularity. Mr Mojapelo submitted finally that given the conflicting versions about the certificate, the version of the respondents had to be accepted. Minister of Public Works immediately accepted that his department had been acting on apparently incorrect information from SARS and that the certificate submitted by Tokologo together with its tender was not valid. The distinct possibility exists that the false certificate was either fraudulently obtained or a forgery.

I have considered the various submissions by the parties and in the final analysis I am not persuaded that this is an exceptional case justifying substitution. Too much time has lapsed since the original tender invitation, affecting questions of pricing and the budgeting process in the department. Moreover, there is now less than 6 months to run on the tender, and it would be inappropriate for the court to bind the department to a tender for 3-4 years into the future and thereby limit its options in the organisation of its affairs. I am also not persuaded on the limited evidence before me that had Tokologo been excluded at the outset, for submitting a false tax certificate, such would automatically have resulted in the tender being awarded to the applicant. In so far as there may be indications of irregularity in the evaluation and comparisons of the bids submitted by the applicant and Tokologo, and I make no finding in that regard, they appear to me insufficient to infer bias or gross incompetence. Moreover, the court is possessed of insufficient information, in relation to all the bids submitted and the ongoing execution of the works while this review was pending, to make an informed decision about the public interest in awarding the tender. Justice will be done in this case by simply setting the tender aside and by giving a direction that should another invitation to tender in respect of repair and maintenance of electrical and mechanical installations of Zonderwater Prison be made, that it should be evaluated and adjudicated by committees comprised of persons other than those who were members of the committees involved in the evaluation, adjudication and award of tender PTO 08/012 which has been the subject of this application.

It is not possible to determine on the evidence before me whether Tokologo obtained a preference in terms of the Act on a fraudulent basis or not. But for present purposes I must conclude that the Minister and officials should have acted to investigate the possibility of a false certificate and non-compliance with Regulation 16 as soon as it was raised in the supplementary affidavit.

	While the applicant was principally motivated by its own interests, its conduct of this litigation has been in the public good and for the public benefit.
Millennium Waste Management v Chairperson Tender Board - Limpopo Province	*29 November 2007, the Supreme Court of Appeal (the SCA) has set aside a judgment of the Pretoria High Court refusing to rescind a tender awarded to a consortium called Thermopower Technology/Buhle Waste/AfrimedicalsJV by the head of the Department of Health and Social Development in Limpopo Province. 14 companies bid for the tender which was awarded to the consortium after other tenders were all disqualified for various reasons.* *The tender of Millennium Waste Management (Pty) Ltd (the appellant) was disqualified because the person who completed the declaration of interest form had inadvertently failed to sign it. The form had been properly completed and the only thing lacking was a signature, even though the name of the person concerned was inserted on the form and he had initialed each page. The appellant's tender, as were all other tenders, was disqualified by a departmental tender committee which subsequently inspected the business facilities of 11 companies, including the consortium's premises. A report compiled by a technical committee at the request of the tender committee, revealed that there were defects in all tenders including that of the consortium. Nevertheless the tender committee recommended that the tender be awarded to the consortium whose tender was the only remaining tender after disqualifications. The consortium was awarded the tender at a cost of R3 642 257 per month whereas the appellant had quoted R444 244 for such service. The SCA found that the disqualification of the appellant's tender was unfair and contravened the provisions of the Promotion of Administrative Justice Act 3 of 2000. The SCA ordered that both the appellant's and the consortium's tenders be reconsidered by the tender board.*
Metro Projects v Klerksdorp Local Department	*On 22 September 2003 the Supreme Court of Appeal of South Africa replaced the order of the court by an order reading that the award by the Klerksdorp Local Municipality to the Remmogo Property Developers (ninth respondent) of tender is set aside and the Klerksdorp Local Municipality is ordered to pay the costs of the application.* *The appellants and the second to twelfth respondents tendered for the development of 1 333 stands in a township known as Jouberton extension 10 which lies within the jurisdiction of the first respondent, a local Municipality established under the Local Government Municipal Structures Act 117 of 1998. On review the court a quo declined to uphold a contention by the appellants that the award of the tender to the ninth respondent ought to be set aside but granted them leave to appeal to this court against the dismissal of their application.* *Was the tender process followed in the present case fair? A high-ranking Municipal official purported to give the ninth respondent an opportunity of augmenting its tender so that its offer might have a better chance of acceptance by the decision-making body. The augmented offer was at first concealed from and then represented to the mayoral committee as having been the tender offer. It was accepted on that basis. The deception stripped the tender process of an essential element of fairness: the equal evaluation of tenders. Where subterfuge and deceit subvert the essence of a tender process, participation in it is prejudicial to every one of the competing tenderers whether it stood a chance of winning the tender or not.*

	The appellants contended that there were several respects in which the ninth respondent's tender failed to comply with the tender conditions. It is unnecessary to discuss what the effect of these imperfections on the validity of its tender might have been. The Preferential Procurement Policy Framework Act 5 of 2000 defines an 'acceptable tender' as one that 'in all respects complies with the specifications and conditions of tender as set out in the tender document'. There are degrees of compliance with any standard and it is notoriously difficult to assess whether less than perfect compliance falls on one side or the other of the validity divide. Whether or not there can in any particular case be said to have been compliance with 'the specifications and conditions of tender' may not be an easy question to answer. In the present case there is no difficulty. The offer put before the mayoral committee was not the one made in the ninth respondent's tender. It was not one elicited by the specifications and conditions of tender.
M & G Limited v 2010 FIFA World Cup Organising Committee South Africa Limited	*On 8 June 2010 the South Gauteng High Court set aside the decisions of the first respondent (2010 FIFA World Cup Organising Committee) refusing the applicant's (M & G Media Limited) request in terms of section 11 and 50 of PAIA to the records. The respondents were ordered to supply the applicants within 30 days of payment by the applicants of the prescribed charges, with copies of:* • *All records of the 2010 FIFA World Cup Organising Committee in respect of all tenders awarded, including advertisements and letters of award; and* • *All records of the 2010 FIFA World Cup Organising Committee relating to the award of the tenders, including but not limited to the providers it was awarded to, the price to be paid and the contracts between the 2010 FIFA World Cup Organising Committee and the providers.* *The matter arose from the applicants applying for access to certain records relating to the procurement or tender processes applied by the company responsible for organising the 2010 soccer World Cup in South Africa.* *In the last week of May 2009, Basson, the investigative journalist in the employ of the Mail & Guardian newspaper, wrote to the Chief Communications officer of the LOC and requested certain information regarding tenders which the LOC had awarded in relation to the Confederations Cup. The Chief Communications Officer responded that the general policy of the LOC is "not to release the names of companies awarded tenders, we are not in a position to disclose the names of preferred suppliers". On 3 June 2009, the applicants' attorneys, Webber Wentzel, wrote to the LOC and reiterated the request for access to the documents. They explained that Basson required access to the records to write an article, and thus exercise the right to freedom of expression and the media. The LOC's attorneys, Edward Nathan Sonnenberg, responded by denying that the LOC was a public body, and stating that if the applicants wished to pursue their request for access, they should do so in terms of PAIA. The applicants did not accept the LOC's denial that it is a public body as defined in PAIA. They submitted a "public body" request in terms of PAIA for access to the information regarding the LOC's tenders. Basson alone was reflected as the requester. On 23 July 2009, the LOC refused the request on the basis that it was not a public body. Given this refusal, the applicants submitted a "private body" request for access to the documents, even though they still*

	maintained that the LOC was a public body. The private body request included reference to the fact that the applicants required access to the records in order to exercise their right to media freedom and to vindicate the right of the public to receive information on matters of public interest. The private body request was refused by the LOC. The LOC asserted that the applicants had failed to establish that they required access to the records in order to exercise or protect their rights. The LOC did not rely on any other grounds of refusal under PAIA for dismissing the request. Having received these two refusals, the applicants launched the present proceedings in terms of section 78 and 82 of PAIA. Section 78 sets out by whom and how such applications are to be brought. Section 82 sets out the powers of the Court if it should grant a section 78 application. On receipt of the present application, the LOC gave detailed consideration to the records sought by the applicants and in its answering affidavit again refused the request for access in totality, but added an additional ground for refusal i.e that disclosure of the records would be likely to harm the commercial interests of the LOC. Applicants apply to this Court for an order directing the LOC to give applicant access to the records of the LOC's tenders i.e. the records created in the process of the LOC selecting and contracting with providers of goods and services when organising the Confederations Cup and World Cup soccer tournament in South Africa in 2009 and 2010 respectively. The respondents' opposition is based on (a) a challenge to the locus standi of the Mail & Guardian and Dawes as they do not qualify as "requesters" under PAIA, (b) an interpretation of PAIA that would mean that its provisions of this act do not apply to the LOC in regard to its tender records; and, (c) if it does apply, certain provisions of PAIA nonetheless afford the LOC protection against having to disclose its records as to do so would damage its commercial interests. To demonstrate that Basson has written articles on the subject of the public interest regarding allegations of corruption relating to public funds, the replying affidavit has copies attached to it of numerous articles which have previously been published on the subject of corruption in relation to, in particular the award of the contracts to provide security services to the LOC. *Access to information is a constitutionally entrenched right. Any refusal of access is a limitation of that right and therefore must be approached as the exception rather than the rule. The LOC, charged with organising the most significant sporting event in the world, and purporting to do so in the public interest, takes a legally insupportable stance in seeking to keep its conduct inaccessible to public scrutiny. Refusing access to these records would enable the organiser of this event to keep from the public eye documents which may disclose evidence of corruption, graft and incompetence in the organisation of the World Cup, or which may disclose that there has been no such malfeasance. It will make it impossible for any enquiry into those matters to be undertaken. This apparently is what the LOC wants. This would be inconsistent with the principles of transparency and accountability which underpin our Constitution, and which are given effect in the right of access to information, contained in the Constitution and in PAIA.*
Imvusu Trading 134 v Dr Ruth Mompati District Department	*On 20 November 2008 the High Court of South Africa dismissed an urgent application with costs.* *The matter arose from invitations, with closing date 14 December 2007, extended to interested parties to tender for the provision of water metered connections and precast toilets for 450 stands in Huhudi. This came to nothing. A second invitation for the completion of this work was re-advertised*

	with closing date 11 April 2008. The applicants (Imvusa Trading 134 CC and Lepholletse Building Construction CC), a joint venture, tendered for the work as did the MOM Building & Distributors CC (fourth) and Maikaego Construction CC (fifth respondents), also as a joint venture. The invitation required tenderers to provide a tax clearance certificate valid for a period of six month. Both rivals (and others) submitted such documents. However, that of the fifth respondent had expired on 20 February 2008. This certificate had been used in the previous bid and had not been replaced. Prima facie it did not comply with the tender conditions. *The fifth respondent's tax clearance certificates were at all material times in order. The fifth respondent's tax affairs were in order as at 20 February 2008. It is not disputed that the fifth respondent's tax affairs were also in order when the contract was signed. What was lacking, on the closing date of the tender, 11 April 2008, was proof of this. The bid committee called for proof. Proof was submitted in the form of a fresh, valid, tax clearance certificate. This corrected a bona fide mistake which the fifth respondent had made. The bid committee was entitled to condone the omission.* *This resulted in the award of the tender to MOM & Co being fair, transparent and competitive.*
Entsha Henra v Hessequa Munisipaliteit	*Op 15 Mei 2008 in die Kaap die Goeie Hoop Hooggeregshof van Suid Afrika is die volgende bevel toegestaan:* • *Die besluite van die Uitvoerende Burgemeesterskomitee van die Eerste Respondent (Hessequa Munisipaliteit), soos geneem op 5 Oktober 2007 en 15 November 2007 onderskeidelik, tot die effek dat die Raad van die Eerste Respondent geen verdere sake met die Applikant (Entsha Henra BK) sal doen nie, word tersyde gestel.* • *Die Eerste Respondent word gelas om die koste van die aansoek te betaal, insluitend die koste van twee advocate.* *By die bogenoemde vergadering van die Burgemeesterskomitee (waartydens beide Jacobs en Steyn in hul hoedanigheid as munisipale amptenare teenwoordig was) het die komitee besluit 'dat weens die poging van omkopery van 'n werknemer van Hessequa munisipaliteit deur 'n werknemer van Entsha Henra, die Raad geen verdere sake met voormelde firma sal doen nie'.* *Later dieselfde dag het die munisipaliteit se Tenderkomitee (die derde respondent) vergader om te besin oor die toekenning van 'n sekere tender. In die lig van die pasgenome besluit van die Burgemeesterskomitee om nie verder sake te doen met die applikant nie, het die Tenderkomitee (waarvan beide Jacobs en Steyn lede is) die betrokke tender toegeken aan 'n mededeingende tenderaar, wie se tender hoër was as dié van die applikant.* *Die eerste been van die applikant se argument was dat beide die bogenoemde besluite van die Burgemeesterskomitee ultra vires en nietig is aangesien die betrokke Komitee geen statutêre bevoegdheid gehad het om die betrokke besluite te neem nie. In hierdie verband is namens die applikant verwys na die geykte beginsel dat 'a local government may only act within the powers lawfully conferred upon it'.*

	In die lig van die bogenoemde oorwegings, is ek van oordeel dat die besluit of die applikant se tenders oorweeg kon word en of die tenders aan die applikant toegeken kon word uitsluitlik by die Munisipale Bestuurder berus het en dat die Burgemeesterskomitee bygevolg geen bevoegdheid gehad het om die besluite van 5 Oktober en 15 November te neem nie. Die besluite was derhalwe strydig met die legaliteitsbeginsel en gevolglik nietig. *Dit volg verder dat dit nie vir my nodig is om enige bevinding te maak aangaande die behoorlikheid of andersins van die applikant se gewraakte optrede wat tot die besluite aanleiding gegee het nie. Hierdie uitspraak moet dus nie vertolk word as steun vir die een of die ander standpunt daaromtrent nie. Dit bring mee dat die applikant – in beginsel altans – geregtig is om in die toekoms verdere tenders vir projekte aan die munisipaliteit voor te lê, onderhewig aan die bevoegdheid van die Munisipale Bestuurder om ingevolge die toepaslike wetsbepalings en beleid daarmee te handel.*
Cash Paymaster Services (Pty) Ltd v The Chief Executive Officer of the South African Social Security Agency NO	*On 11 March 2011 the Supreme Court of Appeal of South Africa upheld the appeal with costs including the costs of two counsel.* *The present respondent, Cash Paymaster Services (Pty) Ltd (Paymaster), launched an application in the high court in which it sought to review the decision taken by SASSA to enter into the Letter Agreement, and interdict* *SASSA from entering into the proposed final agreement with SAPO to render banking or payment services, relating to social security beneficiaries, without having followed a procurement process which complies with s 217(1) of the Constitution, s 51(1)(a)(iii) of the Public Finance Management Act 1 of 1999 (the PFM Act) and the Treasury Regulations made thereunder, or with SASSA's own supply chain management policy. It is common cause that SASSA did not follow a competitive process and the question that arose was whether it was obliged to do so.* *Paymaster, in the light of the aforesaid, had to show that the reasons for the decision were irrational. Because of the way the case was conducted it did not address this issue pertinently. And the reasons are, in my judgment, entirely reasonable. It was not enough for Paymaster to show that the reasons were 'wrong' by, for instance, stating that the viability of SAPO was not tested because other service providers were not granted an opportunity (through a competitive bidding system) to show whether they could offer more attractive options. Such generalized allegations do not address the question whether or not the mentioned reasons were rational.* *The next issue to decide is whether the requirement that the full recording of all the reasons for a decision under reg 16A6.4 is a 'mandatory and material procedure or condition prescribed by an empowering provision' (in the wording of s 6(2)(b) of the Promotion of Administrative Justice Act 3 of 2000). I think not. As was recently said by this court:* *'It is important to mention that the mere failure to comply with one or other administrative provision does not mean that the whole procedure is necessarily void. It depends in the first instance on whether the Act contemplated that the relevant failure should be visited with nullity and in the second instance on its materiality (see in general Nkisimane v Santam Insurance Co Ltd 1978 (2)*

	SA 430 (A) 433H-434E).' *As mentioned, the regulations deal in detail with the consequences of non-compliance. These are dealt with at an administrative level. There is no indication that the regulations contemplate that the requirement of recording was mandatory or material or was introduced for the sake of the public and not only for the sake of good financial government, or that collateral attacks on rational decisions bona fide taken were contemplated as a possible remedy. In one word, I do not find any 'nietigheidsbedoeling' lurking somewhere in the regulation.* *In any event this court in Moseme Road Construction CC & others v King Civil Engineering Contractors (Pty) Ltd & another held that 'not every slip in the administration of tenders is necessarily to be visited by judicial sanction'. Considerations of public interest, pragmatism and practicality should inform the exercise of a judicial discretion whether to set aside administrative action or not.*
Actaris South Africa v Sol Plaatje Department, Intelligent Metering Systems	*On 29 February 2008 the Northern Cape High Court granted an interim interdict restraining and/or interdicting first (Sol Plaatjie Municipality) and second respondents (Intelligent Metering Systems), pending the finalization of the review application under case number 1357/07, from installing any meters in accordance with respondents Project Plan Summary "AA", copy whereof is attached to the Notice of Motion is hereby granted. Both first and second respondents are ordered to pay the costs of this application on a party and party scale jointly and severally, the one paying the other to be absolved, such costs to include the costs consequent upon the employment of two counsel.* *During or about December 2006 the first respondent issued invitations to tender for four tenders. What is particularly relevant to this case , is the tender for the supply, delivery and installation of pre-payment electricity meters or compatible software and devices for revenue protection.* *When the tenders were opened in public on 8 December 2006, quite inexplicably, the prices of the respective bidders were not read which conduct, applicant avers, seriously undermines the critical principle of openness and transparency which of all public tenders, in particular those administered by government, public institutions and organs of state must adhere to.* *It is worth noting that, notwithstanding a clear request for reasons, first respondent furnished no reasons for its decision.* *Applicant (Actaris SA) had requested to be furnished with reasons for the award of the tender to second respondent which request was not complied with and further that applicant was denied access to crucial and essential information and documents which had a direct bearing on the award of the tender in issue.* *Second respondent used every conceivable strategy to frustrate applicant in its quest for reasons and for essential information surrounding the award of the tender. It is furthermore clear that even after first respondent decided to comply with the applicant's request, for some inexplicable reasons,*

	first respondent became very selective concerning the information which it made available to the applicant. Firstly, the first respondent prevaricated to furnish reasons for the award of the tender. In response to this request, first respondent sought refuge under section 5(1) of PAJA. I regret to state that this move was ill-conceived as section 5(1) does not necessarily prescribe that reasons shall be furnished only after 90 days of the request. All that this section does, is to give the aggrieved person who has not been furnished with reasons for any action which adversely and materially affect his/her rights, the mechanism to use and the time period within which such a person can apply for such reasons. *To compound this problem further when it ultimately gave reasons, it gave two sets of different if not conflicting reasons. It is interesting to note that in the first reasons it is alleged, without any proof, that applicant was disqualified due to the fact that first respondent had received a number of complaints, apparently from members of the public (i.e. users), about the support and functionality of its services. This is however directly contradicted by the letter by first respondent dated 4 July 2007 wherein it is stated that "Sol Plaatje and its staff had a wonderful and pleasant experience working with Actaris Metering Systems and its staff hence would like to take this opportunity to extend our gratitude and sheer appreciation of the services that your company has offered throughout the years."* *On the facts before me, I am constrained to find, as I hereby do, that it is in fact in the interests of all the parties, including the communities falling under first respondent's jurisdiction that the interim interdict be granted to avert any further unnecessary possible wastage of the Municipality's scant and rare capital resources which, in any event, come from the public purse. Any further delays would invariably give the second respondent the unfair advantage to continue to finish off the project. In the long run and by the time the main application for review is heard in all like hood the project will be finished and both first and second respondents would then argue, correctly so, that the contract has been fully executed and any relief would therefore be merely academic and therefore not capable of practical application.* *Having given this matter careful and anxious consideration, I am satisfied that the applicant has no other alternative remedy than an interim interdict. The argument that the review application would be adequate in the circumstances is simply fallacious. If the respondents are not interdicted now, by the time the review application is heard, it will be water under the bridge for the applicant as the contract will be fully implemented. In the circumstances the respondents must take full blame for the position in which they find themselves.*

ALIGNMENT WITH MFMA SCM TREASURY REGULATIONS(TR's)

SCM TR #	SCMPPOS REFERENCE	
	PARAGRAPH	VOLUME AND PART
1	Not applicable	
2	1.4.2; 1.5.1; 1.10.5; 3.1.1.1	Volume 1 – Part 1.4 &1.5 Volume 1 – Part 1.10 Volume 3 – Part 3.1
3	1.4.2; 1.4.3; 1.7.1; 1.10.3	Volume 1 – Part 1.4 Volume 1 – Part 1.7 &1.10
3(2)(c)	1.4.3.3	Volume 1 – Part 1.4
4	1.9.1	Volume 1 – Part 1.9
5	1.9.1; 1.9.3; 1.10.3	Volume 1 – Part 1.9 &1.10
6	1.10.1; 1.10.2	Volume 1 – Part 1.10
7	1.8.1; 1.10.4; 1.10.6	Volume 1 – Part 1.8 &1.10
8	1.8.1	Volume 1 – Part 1.8
9	1.6.1; 1.11.17	Volume 1 – Part 1.6 &1.11
10	1.13.3	Volume 2 – Part 2.1
11	1.11.8: 3.1.1.1	Volume 1 – Part 1.11 Volume 3 – Part 3.1
12	1.10.5; 3.2.1	Volume 1 – Part 1.10 Volume 3 – Part 3.2
13	3.1.4.9	Volume 3 – Part 3.1
14	2.4.1	Volume 2 – Part 2.4
15	3.1.2.1; 3.2.2	Volume 3 – Part 3.1&3.2
16	3.1.2.1; 3.2.3	Volume 3 – Part 3.1 & 3.2
17	3.1.2.1; 3.2.4.1	Volume 3 – Part 3.1 & 3.2
18	3.1.2.1; 3.2.4.1	Volume 3 – Part 3.1 & 3.2
19	3.1.2.1; 3.2.5.1	Volume 3 – Part 3.1 & 3.2
20	1.11.15; 3.1.2.1; 3.2.5.1	Volume 1 – Part 1.11 Volume 3 – Part 3.1 & 3.2
21	3.1.2.1	Volume 3 – Part 3.1
21(e)	1.11.15; 1.11.16	Volume 1 – Part 1.11
22	3.1.2.4	Volume 3 – Part 3.1
23	3.1.3.1.1	Volume 3 – Part 3.1
24	3.1.4.13	Volume 3 – Part 3.1
25	3.2.5.2	Volume 3 – Part 3.2
26	1.10.5; 1.12.1; 1.12.8; 3.1.4.9	Volume 1 – Part 1.10 &1.12 Volume 3 – Part 3.1
27	1.9.3; 1.12.1; 1.12.2	Volume 1 – Part 1.9 &1.12
28	1.12.1; 1.12.3.1	Volume1 – Part 1.12

SCM TR #	SCMPPOS REFERENCE	
	PARAGRAPH	VOLUME AND PART
29	1.9.3; 1.10.3; 1.12.4.1; 3.1.4.10; 1.12.1; 1.12.3.2; 1.12.4.2; 3.1.4.30.1	Volume1 – Part 1.12 Volume3 – Part 3.1
30	3.2.10	Volume3 – Part 3.2
31	3.2.9	Volume3 – Part 3.2
32	3.2.13	Volume3 – Part 3.2
33	3.2.11	Volume3 – Part 3.2
34	3.1.4.19	Volume3 – Part 3.1
35	3.2.8	Volume3 – Part 3.2
36	1.12.9; 3.2.5.4	Volume1 – Part 1.12 Volume3 – Part 3.2
37	3.2.17	Volume3 – Part 3.2
38	1.10.5; 1.11.9; 1.11.10; 1.11.11; 1.11.14	Volume1 – Part 1.10 &1.11
38(1)	1.12.7	Volume1 – Part 1.12
39	2.1.3; 5.1.3; 6.1.1	Volume 2 – Part 2.1 Volume5 – Part 5.1 Volume6 – Part 6.1
40	8.3.1; 7.2.1	Volume7 – Parts 7.1&7.2 as a whole
41	8.1.1	Volume8 – Part 8.1 as a whole
42	2.1.1; 8.3.1	Volume 2 – Part 2.1 Volume8 – Part 8.3
43	2.4.1.4; 3.1.4.5; 3.1.4.10; 3.1.4.15; 4.2.16	Volume2 – Part 2.4 Volume3 – Part 3.1 Volume4 – Part 4.2
44	1.9.2; 1.10.5; 1.11.2; 1.12.3.2; 1.12.4.2; 2.4.1; 4.2.16	Volume1 – Part 1.9, 1.10, 1.11, 1.12 Volume2 – Part 2.4 Volume4 – Part 4.2
45	1.10.5;1.11.2; 2.4.1	Volume1 – Part 1.10 & 1.11 Volume2 – Part 2.4
46	1.9.2; 1.10.5; 1.11.1; 1.11.2; 1.12.3.2; 1.12.4.2	Volume1 – Part 1.9, 1.10, 1.11 & 1.12
47	1.10.5; 1.11.2; 1.11.8	Volume1 – Part 1.10 &1.11
48	1.10.3	Volume1 – Part 1.10
49	1.11.14; 1.11.15; 1.11.16	Volume1 – Part 1.11
50	1.10.3; 1.11.14; 1.11.15; 1.11.16; 1.12.1.3	Volume1 – Part 1.10, 1.11 &1.12
51	4.1.1	Volume4as a whole –Part 4.1
52	Not applicable	

HESSEQUA

Munisipaliteit / Municipality

NEEDS ASSESSMENT REPORT

To be completed before the appointment of a consultant

"In terme van Hessequa Munisipaliteit se Anti-Korrupsie en koste besparings strategie en die implementering van Anti-Korrupsie prosedures in al die fasette van Administrasie is dit belangrik dat hierdie beleidsdokument aan die Raad se Anti-Korrupsie en koste besparings doelwitte voldoen en daarom vorm dit deel van die Hessequa Munisipaliteit se Anti-Korrupsie beleid."
"In terms of Hessequa Municipality's Anti-Corruption and Cost saving strategy and the implementation of the Anti-Corruption procedures in all the facets of Administration it is important that this policy document apply to the Council's Anti-Corruption aims and therefore form part of the Hessequa Municipality's Anti-Corruption policy."

ANNEXURE A: NEEDS ASSESSMENT AND GAP ANALYSIS REPORT

HESSEQUA MUNICIPALITY

GAP ANALYSIS: PROCUREMENT OF CONSULTANCY SERVICES

Introduction:

In terms of Regulations 5 (1) of the Municipal Cost Containment Regulations, 2019 (hereinafter referred to as the Regulations), a municipality may only appoint a consultant if an assessment of the needs and requirements confirms that the municipality does not have the requisite skills or resources in its full time employ to perform the function.
The department in need for the consulting services must familiarise themselves with the Regulations.

This Needs Assessment Report is to be used when procuring Consultancy Services through the Supply Chain Management Process and must be submitted together with the "Formal Request for Procurement" to the Supply Chain Management Unit, prior to commencement of the supply chain management process.

SECTION A: USER INFORMATION		
Directorate		
Department/ Section		
Project Name		
Name of Director		
Official requesting the appointment of a consultant:	**Designation**	
	Name and Surname	
Estimated Costs		
SECTION B: GAP ANALYSIS: DETAILS ON CONSULTING SERVICES REQUIRED		
Scope: Details on type of consulting services required.		

Intended Output	
Motivation & Identification of Gaps: (Reasons confirming that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required)	
Are there any legal requirements for consultants to be appointed	
Are the specialized consultant skills not ordinarily required (day-to-day operations) by municipality;	
Is it necessary to maintain these skills in-house i.e. a skills transfer programme applies or if the demands are a once-off or temporary basis (including intermittent service)	
Urgency, in terms of time-based demands, example reporting and specialists not on the municipality`s payroll	

Professional services in terms of business, finance, advisory, infrastructure, planning, laboratories or veterinary	
Whether the consultant skills/service are appropriate as the service is linked to a professional indemnity requirement (outsourcing / transfer of risk)	
Whether the consultant skills/service are critical for service delivery and or for compliance (and if skills transfer will be required)	
Effect if Services are not procured	
Will there be transfer of skills? If yes, please elaborate. If no, please elaborate why not?	
SECTION C: RECOMMENDATION BY RELEVANT MANAGER	
Based on the above reasons, I hereby confirm that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required.	
Name:	
Designation:	
Signature:	
Date:	

Recommendation and additional Comments:	
SECTION D: RECOMMENDATION BY RELEVANT DIRECTOR	
Based on the above reasons, I hereby confirm that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required.	
Name:	
Designation:	
Signature:	
Date:	
Recommendation and additional Comments:	